

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.530/2017

Dated this Tuesday the 5th day of June, 2018

CORAM:HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

1. Smt. Hemlata Widow of Late Satish Dattatraya Kolhe (Deceased Rtd. Employee) R/at Thorgawhan – 425 501. Tal. Raver, Dist. Jalgaon.
2. Mr. Kapilchandra Satish Kolhe R/at Thorgawhan 425 501, Tal. Raver, Dist. Jalgaon.
3. Kumara Kiran Satish Kolhe, Unmarried daughter of Applicant No.1 and of deceased Satish Dattatraya Kolhe, R/at Thorgawhan 425 501, Tal. Raver, Dist. Jalgaon. ... *Applicants*

(By Advocate Shri Vicky Nagrani)

VERSUS

1. Union of India, through The General Manager, Central Railway, Head Quarter Office, Mumbai CSTM 400 001.
2. Divisional Railway Manager (P) Central Railway, Bhusawal Division, Dist. Jalgaon, Bhusawal 425 201. ... *Respondents*

(By Advocate Ms. S.A. Gujar Karande)

ORDER (Oral)
Per : Shri R. Vijaykumar, Member (A)

This Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

“8.a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same quash and set aside the order dated 01.03.2017, only to the extent of not granting pension to the applicants w.e.f. 03.10.2005, with all consequential benefits.

8.b) This Hon'ble Tribunal may further be pleased to direct the respondents to release pension w.e.f. 03.10.2005 i.e. the date of order of compulsory retirement till 15.03.2014 along with interest of 18% p.a. with all consequential benefits.

8.c) Costs of the application be provided for.

8.d) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.

8.e) This Hon'ble Tribunal may further be pleased to direct the respondents to grant the applicant Smt. Hemlata Satish Kolhe and her daughter Ku. Kiran Satish Kolhe railway medical and travelling facility/benefits.”

2. The brief facts of the case are that the applicant's husband was serving with respondents and commenced his employment on 09.09.1979 and was regularized as Khalasi on 30.09.1980. He married the Applicant on 15.02.1985 and had two children who are included as Applicant Nos.2 & 3 in this application. Since he was a habitual drinker, it is alleged, he was harassing the applicant and she had to file a criminal

case for grant of maintenance which was ordered on 21.06.1996 by the First Class Judicial Magistrate, after birth of children for grant of maintenance to Applicant No.1 of Rs.150/- p.m. and Rs.75/- p.m. to Applicant Nos.2 & 3. The Applicant's husband was retired compulsorily by the Railways for unauthorized absence and he expired on 15.03.2014. On appeal, the Appellate Authority modified the penalty to compulsory retirement with all pensionary benefits in orders dated 03.10.2005. Therefore, the applicant's husband was entitled to pension from the date of compulsory retirement until 15.03.2014 but it appears that he never filed a request nor the required pensionary papers to enable such disbursement. After his death, his wife made an application and the respondents have considered her entitled to family pension based on the documents provided and have accordingly, commenced disbursement of family pension to her and have also directed the concerned officers to release settlement dues. However, the pension due to the applicant's husband and by which she would have become entitled to

receive her amount as fixed by the Court was not sanctioned and disbursed to the applicants from which arises the grievance in this application.

3. The Applicant has emphasized her right to pension that was due and payable to her husband but was not paid because he had not made a proper application. She had, therefore, filed her first application claiming all these amounts on 26.05.2014. The request specifically says at page 2 "I request your honour to supply me the settlement papers for the payment of family pension w.e.f. 16.03.2014 and for other pensionary benefits for which my husband was entitled for the payment." Although the applicant was not aware that her husband had not been given his due pension, the reference to pensionary benefits in her letter clearly includes all such dues that were the obligation of the respondents to disburse subject to satisfaction of their procedure.

4. The Respondents in their impugned order No.BSL/P/Pen/Family Pension/HSK dated 01.03.2017 have responded to this request

and reminders but have claimed that they were taking a lenient view and granting her certain benefits while denying her pension that had accrued to her husband between the date of compulsory retirement and the date of demise.

5. During the final hearing, learned counsels were heard on the single issue that was involved on whether the family of the deceased pensioner could obtain the money that was due to the pensioner by way of pension from the time it became due to the date of his demise. The arguments of the respondents is that the applicant's husband never applied for pension and that the applicants were not residing with him and were not even aware about his whereabouts or circumstances of his demise in 2014. They distinguish between pension and family pension and state that the family has no right to pension, which is entirely for the pensioner. They also assert that the applicant's husband was a Senior Clerk in the Establishment Section and was quite literate and knowledgeable about rules and procedures. There was no excuse, therefore,

for not claiming pension.

6. In response, learned counsel for the Applicant has pointed out that the respondents have already acknowledged the claim of the family and have granted family pension and settlement dues. Learned counsel cites linked cases of ***Deokinandan Prasad Vs. The State of Bihar and Ors., 1971 (2) SCC 330 decided on 04.05.1971*** and ***Salabuddin Mohamed Yunus Vs. State of Andhra Pradesh, 1985 SCR (1) 930 decided on 28.09.1984***. These orders of the Hon'ble Supreme Court clearly endorsed the view that pension is a fundamental right and could be taken away or curtailed only in the manner provided under the Constitution. It was also held that pension is not a bounty payable at the sweet will and pleasure of the Government but is a right vesting in a Government servant and was property under clause (1) of Article 31 of the Constitution of India and the State had no power to withhold the same by a mere executive order and that similarly, this right was also property under sub-clause (f) of clause (1) of Article 19 of the Constitution of India and was not saved by

clause (5) of that Article. Learned counsel argued that if pension was the property of the pensioner, all his property would accrue to his family in accordance with the Acts and Rules relevant to such succession.

7. The views of learned counsel and the laws and ruling in this regard has been carefully considered. As pointed above in the orders of the Hon'ble Apex Court, it is clear that pension is a fundamental right and the property of the pensioner. In cases such as the present one, if the pensioner has not filed necessary documents, his claim cannot be said to have been extinguished. He can make a claim at any point of time and through any agent with proper authority for reclaiming his property. Neither applicant nor respondents have referred to any limitations of time on this aspects and they do not appear to be applicable. The role of the respondents in respect of unclaimed pension is, therefore, similar to that of holding property in trust. Therefore, when a claim arises, and the genuineness of the claimant and entitlements thereof have been thoroughly verified, there is an obligation

upon the trustee, to deliver the property left in trust by the original owner, to the claimant.

8. In this case the claimant is the family of the deceased and their rights have been properly recognized including for the purpose of disbursement of settlement dues. Therefore, it is the bounden duty of the respondents to deliver the property left in their entrustment by the deceased pensioner to the claimants, who are the deceased pensioner's family.

9. The Applicants have claimed interest @ 18% of the pension dues from 2005 to 2014 and thereafter. However, pension can be disbursed only if the application has been made and will have to be scrutinized and then disbursed. In this case, the first application was made by Applicant No.1 only on 26.05.2014. Therefore, there cannot be any penal interest leviable for the pension dues prior to her application. However, all the pension amounts that had accrued to the pensioner until his death became due upon her application with requisite documents and it is not been denied that this application

was duly received in May 2015. Therefore, interest would be leviable only from that date upto date of disbursement of the pension that should have been paid to the applicant's husband if he had made such an application for disbursement.

10. In the circumstances, the **OA is allowed.** The amounts that should have been paid to the applicant's husband as pension for the period from compulsory retirement to the date of demise shall be paid forthwith to the applicants along with interest @ 9% from 26.05.2014 upto date of payment. There is no further order as to costs.

(R. Vijaykumar)
Member (A)

dm.