

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
CAMP AT NAGPUR.**

O.A.2250/2009

DATED THIS FRIDAY THE 14th DAY OF SEPTEMBER, 2018.

CORAM: DR.BHAGWAN SAHAI, MEMBER (A) .

- (i) Smt.Kalpana W/o Rajesh Dongardive,
Aged Major, Occ. Nil),
R/o. Near Sayyab Baba Darga,
Plot No.311/11, Vanjari Nagar,
Ajni, Nagpur - 440 003,
daughter of petitioner.
- (ii) Smt.Durga Wd/o Sudam Chauhan,
Aged Major, Occ. NIL
R/o. Near Sayyad Baba Darga,
Plot No.311/33/A/1, Vanjari Nagar,
Ajni, Nagpur - 440 003,
daughter of deceased.
- (iii) Smt.Wandana W/o Ganesh Wankhede,
Aged Major, Occ: Nil,
Daughter of deceased,
R/o. Near Sayyad Baba Darga,
Plot No.311/33, Vanjari Nagar,
Ajni, Nagpur - 440 003.
.. Legal representatives
/heirs.

(By Advocate Shri A.B. Bambal) .

Versus

- 1. Union of India, through
General Manager,
Central Railway,
Mumbai CST.
- 2. Divisional Railway Manager,
Central Railway, Nagpur.
- 3. Divisional Railway Manager,
Central Railway, Bombay Division,
Bombay CST-400 001. ..Respondents.

(By Advocate Shri Alok Upasani) .

Order reserved on : 27.08.2018
Order delivered on : 14.09.2018.

O R D E R

1. In this O.A., the earlier applicant Smt.Subhadrabai, widow of late Shri Ramhari Ukrande, sought relief by directing respondents to grant and pay monthly family pension to her from the date of death of her husband i.e. 14.08.1978, alongwith arrears of family pension, other retiral benefits such as Provident Fund, Gratuity, etc with 12% interest by allowing this O.A. with cost.

2. Facts stated in brief:

2(a). This O.A.2250/2009 was decided earlier on 17.02.2014 with a direction to the respondents to reconstruct service record of the deceased ex-employee late Shri Ramhari Ukrande within three months and then to decide the claim of the applicant for grant of family pension. The applicant was also directed to check availability of any documentary evidence with her regarding service rendered by her late husband with the Railways and to handover its copies to the respondents. While diciding the O.A. in this way, M.A.No.2158/2009 for condonation of delay was also disposed of.

2(b). Husband of the earlier applicant, late Shri Ramhari Ukrande, had joined Railway service as Class

IV employee on 07.08.1952 with Nagpur Division of the Central Railway and while in service he died due to illness on 14.08.1978.

2 (c) . After almost 16 years of his death, the earlier applicant (late Smt.Subhadrabai) made a representation to the respondents on 16.03.1994 for retiral benefits of her late husband and family pension. She again submitted representations on 30.12.1997 and 22.09.2009 but could not get any relief from the respondents.

2 (d) . Because of non-compliance of the order of 17.02.2014 by the respondents, Contempt Petition No.2124/2014 was also filed by the applicant, which was heard on 26.02.2015 when a status-report filed by the respondents was brought on record.

2 (e) . On 26.03.2015 the respondents filed R.A.No.2104/2015 explaining the efforts made by them to reconstruct the service record of ex-employee Shri Ramhari Ukrande by constituting a JAG Committee consisting of Sr.D.P.O., Sr.D.A.O. and Branch Officer of the Department in which the ex-employee has been claimed to have worked. This exercise concluded that documents pertaining to service of late Shri Ramhari Ukrande be sought from Loco Shed, Ajni where he was claimed to have served. However, no record prior to 1976 is available in that office.

2(f). The Welfare Inspector was also deputed to collect information from the applicant's daughter Smt.Kalpana Dongardive and her mother but because of illness of the latter, he could not meet them. Also no document has been submitted by the earlier applicant or present applicants to show that late Shri Ramhari Ukrande had opted for the pension scheme started in 1957.

2(g). Since neither the efforts of the respondents succeeded in reconstructing the service record of late Shri Ramhari Ukrande nor his family members produced any documents related to his service as was directed by the order of 17.02.2014, the Review Application No.2104/2015 filed by the respondents in the O.A. was considered on 30.10.2017. After hearing the parties, the R.A. was allowed and the order passed by this Tribunal on 17.02.2014 (Single Bench) in O.A.2250/2009 was set aside. It was also directed that the D.R.M., C.S.T. Mumbai be impleaded as respondent No.3 in the O.A.

2(h). The Advocate for the applicant on 11.12.2017 filed M.A.2312/2017 for bringing on record legal heirs of the deceased applicant late Smt.Subhadrabai Ramhari Ukrande, who had died on 10.01.2016. This M.A. was allowed on 16.04.2018 and 3 legal heirs of late Smt.Subhadrabai Ramhari

Ukrande came to be impleaded as her legal heirs viz. the present applicants Smt.Kalpana Rajesh Dongardive, Smt.Durga Sudam Chauhan and Smt.Wandana Ganesh Wankhede.

3. Pleadings of advocates of the parties:

The applicants' advocate has contended that -

3(a). since ex-employee Shri Ramhari Ukrande died in harness, the applicants are eligible for family pension and other benefits;

3(b). it is statutory duty of the respondents to pay these benefits to the applicants. Late Smt.Subhadrabai Ramhari Ukrande had 2 sons and 3 daughters and because of her illiteracy and ignorance and non-payment of pension being a continuous cause, the delay in filing the O.A. be condoned;

3(c). O.A. be allowed directing the respondents to grant and pay monthly family pension to the present applicants from the death of late employee Shri Ramhari Ukrande i.e. from 14.08.1978, alongwith interest @ 12%.

The respondents' advocate has contended that -

3(d). no specific ground has been made out by the applicants for condonation of delay as the O.A. is hopelessly time barred i.e. it has been filed after

almost 31 years of death of late Shri Ramhari Ukrande;

3(e). no documents have been filed by the original applicant Smt.Subhadrabai Ukrande and her legal heirs about late Shri Ramhari Ukrande's service with the Railways and about Smt.Subhadrabai Ukrande being his wife. To ascertain genuineness of claim of Railway service of late Shri Ukrande, his service record is required for verification but the respondents do not have it as the record prior to 1976 has already been destroyed as per their internal working procedure;

3(f). since the ex-employee died in 1978 and the cause of action for seeking relief arose then, this O.A. is not maintainable because the Central Administrative Tribunal can take up only those cases for which cause of action has arisen after 1983;

3(g). neither late Shri Ramhari Ukrande, ex-employee, nor the original applicant (Smt.Subhadrabai) nor the three legal heirs brought on record later made any efforts for bringing on record evidence about filing of required papers / details of family members with the respondents by late Shri Ramhari Ukrande for processing pensionary benefits for himself or his dependents. Hence it is not known to the respondents whether he had opted

for coverage under the pension scheme of Railways started in 1957 or had continued with the Contributory Provident Fund in operation earlier;

3(h). both the sons and all the daughters of late Shri Ramhari Ukrande were also major at the time of his death but even then they did not make any efforts for grant of pensionary benefits immediately after death of late Shri Ramhari Ukrande;

3(i). initially the earlier applicant had represented on 16.03.1994 to D.P.O., South East Division, whereas the claim of service of late Shri Ramhari Ukrande is for the Central Railways, which means the applicants are not sure as to where late Shri Ukrande had actually served. He seems to have worked as Yard Khalashi, however, the Carriage & Wagon Department has not been able to trace any service record pertaining to his service;

3(j). after death of the earlier applicant Smt.Subhadrabai Ramhari Ukrande on 10.01.2016, no other legal heirs are eligible for family pension;

3(k). the provisions of Railway Services (Pension) Rules, 1993 need to be applied carefully as they specify as to whom pension can be granted; and

3(l). the delay on the part of the applicant in seeking the relief is time-barred and this aspect

was not properly appreciated by this Tribunal when the earlier order was passed on 17.02.2014. It be considered now. The O.A. is misconceived and hopelessly delayed, therefore, in view of various decisions of the Hon'ble Supreme Court such as **E. Parmasivan and others Vs. Union of India and others, (2003) 12 SCC 270** and decisions of C.A.T., Mumbai Bench and Kolkata Bench, the O.A. should be dismissed.

Analysis and conclusions:

4(a). I have considered the pleadings/contentions advanced by both the advocates. I have also perused carefully the O.A. memo, reply filed by the respondents dated 10.06.2010, decision of this Bench dated 17.02.2014, subsequent decision of this Bench on the Review Application No.2002/2015 dated 30.10.2017, application filed by the applicants to bring legal heirs of Smt.Subhadrabai Ramhari Ukrande on record, additional affidavit filed by the respondents on 21.07.2015, the reply filed by respondent No.3 on 18.06.2018 as well as Railway Services (Pension) Rules, 1993. I have also studied the case laws cited by the advocates for the applicants and respondents i.e. E. Parmasivan and ors. Vs. Union of India dated 14.02.2002 and DOPT OMs dated 28.04.2011 and 11.09.2013 on the subject

of family pension to widowed/divorced/unmarried daughters and dependent siblings. I have also carefully studied the decision of this Tribunal in **O.A.689/1990 dated 12.04.1994 (J.A. Sams Vs. Union of India & Another)** and the 5 Member Bench decision of the Supreme Court in **Krishena Kumar and Anr. Vs. Union of India dated 13.07.1990 (1990 AIR 1782)**.

4(b). On analysis of contents of the documents referred to above, contentions of the parties and gist of case laws cited, the following position emerges:

The earlier applicant Smt.Subhadrabai Ramhari Ukrande and late Shri Ramhari Ukrande had 2 sons and 3 daughters as mentioned in the representation of Smt.Subhadrabai made on 30.12.1997. In that representation, age of the two sons was mentioned as 35 and 30 years. In Smt.Subhadrabai's letter of 22.09.2009, name of her husband was mentioned as Hariram Yashwanta Ukrande and not as Ramhari Yashwanta Ukrande.

4(c). After death of Smt.Subhadrabai on 10.01.2016 through M.A.2312/2017 dated 11.12.2017, only 3 daughters of the Ukrande couple have been brought on record as their legal heirs but nothing has been mentioned about their two sons. This amounts to concealment of relevant vital details

thereby raising suspicion about genuineness of this O.A. The legal heirs of the Ukrande couple brought on record i.e. as 3 daughters are neither unmarried nor divorced nor handicapped, they seem to be all married and settled with their families. While bringing the 3 daughters on record as legal heirs of late Smt.Subhadrabai, neither their age has been disclosed nor sources of earnings have been disclosed. Because of this there is reasonable ground to presume that they seem to have sources of reasonable earnings.

4 (d) . It is also important to consider prolonged delay of 31 years in filing of this O.A. after death of the ex-employee. The death of late Shri Ukrande was not sudden, he died due to illness as claimed by the applicants themselves. Therefore, it is more reasonable to expect that his dependents would have come to know from him whether he was entitled for pensionary benefits and then they ought to have applied for it in time. After such a delay it is necessary to examine as to whether the issue has become a dead or stale issue, as highlighted in para 9 of the Apex Court decision dated 08.12.2009 in **Union of India & another Vs. M.M. Sarkar.** In my view, this issue in the O.A. after such a delay of almost 40 years by now after death of late Shri

Ramhari Ukrande, it has become a dead issue and litigation on this must stop now.

4 (e) . Late Shri Ramhari Ukrande had joined service with the respondents in 1952 and expired in 1978, but none of the parties has been able to bring on record the fact as to whether the late Shri Ramhari Ukrande had exercised his specific choice for the pension scheme when it was introduced in 1957. At that time the pension scheme of Railways was introduced on 16.11.1957 and it was made applicable to Railway employees who entered the service on or after 16.11.1957. Subsequently the respondents also provided several extensions between 1957 to 1974 for enabling the then employees to choose for the pension scheme or to continue with the Contributory Provident Fund. Since Shri Ukrande had joined the Railway service on 07.08.1952, the pension scheme was not applicable to him. But during the subsequent extensions given by the Railways for choosing the pension scheme, late Shri Ukrande had an option to opt for it, but whether he had actually opted for it is not known. From the evidence of facts or evidence in support of facts brought on record, it is not clear as to whether late Shri Ramhari Ukrande was at all employed by the Railways on a regular basis, and if yes, then

whether he had worked on a post for which option of pension scheme was available when it was commenced. Therefore in absence of evidence to support that he had opted for the pension scheme in 1957 or thereafter, it cannot be held that he was eligible for pension and after his death his family was eligible for family pension. Since there is nothing brought on record to establish that late Shri Ramhari Ukrande had exercised his specific choice for the pension scheme, it seems he continued to be under the Contributory Provident Fund and after his death his dependents might have received the accumulated amount of payment under the Contributory Provident Fund. This has not been denied by the applicants.

4(f). Although the cause of action arose on 14.08.1978 i.e. on death of late Shri Ramhari Ukrande, in absence of record proving his clear choice for the pension scheme, the respondents at this late stage cannot be compelled to grant family pension to his dependents. The earlier applicant i.e. Smt.Subhadrabai Ramhari Ukrande also filed the O.A.2250/2009 after almost 30 years of that incident and merely stating that non-payment of family pension is a continuous cause of action is no full justification for this prolonged delay. This

clearly reveals absence of diligence on the part of the applicants. On this ground itself, as submitted by the counsel for the respondents, this O.A. deserves to be dismissed because the issue of limitation/delay and laches needs to be properly appreciated and applied in this case. Consequently the request of the applicants to condone the delay in seeking the relief cannot be agreed to. The respondents have made sincere efforts to trace and reconstruct the service record of late Shri Ramhari Ukrande, but they have not succeeded. This appears acceptable.

5. Decision:

In view of the above analysis of issues pertaining to this O.A., certain aspects of the case remaining still unexplained by the applicants, unjustified, prolonged delay of about 31 years in filing this O.A. after death of late Shri Ramhari Yashwanta Ukrande and non-availability of service record of late Shri Ukrande with the respondents as well as the applicants, especially about specific choice of late Shri Ukrande for his coverage under the pension scheme of the Railways, it does not seem feasible, fair and reasonable to direct the respondents to grant family pension to the applicants. Hence the O.A. fails and is dismissed. No order as to costs.

(Dr. Bhagwan Sahai)
Member (A) .

H.

