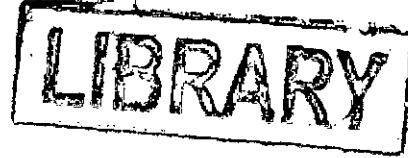


**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH**



OA 350/1631/2014
MA 924/2017

Heard on: 29.08.2019

Date of Order: 03.09.2019

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Hon'ble Dr. Nandita Chatterjee, Administrative Member

Smt. Pratima Sarkar, wife of Late Birendra Kumar Sarkar,
Village-North Rath Khola, P.O. and P.S. Naxalbari,
district: Darjeeling, West-Bengal, Pin-734429.

..... Applicant.

Versus

The Union of India through

1. The Chairman,
Railway Board, Govt. of India,
Rail Bhawan, New Delhi, Pin-110001.
2. Deputy Director (Public Grievance)
Railway Board, Govt. of India,
Rail Bhawan, New Delhi, Pin-110001.
3. General Manager,
North East Frontier Railway,
Maligaon, Guwahati, Assam,
Pin- 781011.
4. Financial Advisor and Chief Accounts Officer,
North East Frontier Railway,
Maligaon, Guwahati, Assam,
Pin- 781011.
5. Deputy Chief Personnel Officer/RP,
North East Frontier Railway,
Maligaon, Guwahati, Assam,
Pin- 781011.
6. Divisional Railway Manager(P),
North East Frontier Railway,
Katihar, Bihar,
Pin- 854105.
7. Senior Divisional Financial Manager,
North East Frontier Railway,
Katihar, Bihar,
Pin- 854105.
8. Divisional Accounts Officer,
North East Frontier Railway,
Katihar, Bihar,
Pin- 854105.

9. Chief Signal and Telecommunication Officer,
North East Frontier Railway,
10. District Signal and Telecommunication Officer,
North East Frontier Railway,
11. Assistant Signal and Telecommunication Officer,
North East Frontier Railway,
9,10 and 11 having their Offices at Katihar,
Bihar, Pin-854105.

..... Respondents.

For the Applicant(s) : Mr. A.Biswas, Counsel
For the Respondent(s) : Ms. G.Roy, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

The applicant has approached this Tribunal praying for the following relief:

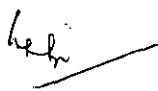
"a) To direct the Respondents to pay the arrear salary money of husband of the applicant from 22.8.1978 to 31.03.1987 according to the aforesaid actual fixation and calculation of pay scale, Basic pay and Grade-I (One) Rank of her husband with adequate interest to her.

b) To direct the respondents to pay the all arrear retirement money of husband of the applicant from 22.8.1978 to 31.03.1987 according to the aforesaid actual fixation and calculation of pay scale, Basic pay and Grade-I (One) Rank of her husband with adequate interest to her.

c) To direct the respondents to pay the arrear pension money of husband of the applicant from 01.4.1987 to 21.11.1990 according to the aforesaid actual fixation and calculation of pay scale, Basic pay and Grade-I (One) Rank of her husband with adequate interest to her.

d) To direct the respondents to pay to the applicant arrear family pension money from 22.11.1990 till the date of fixation of her actual monthly family pension money according to the aforesaid actual fixation and calculation of pay scale, Basic pay and Grade-I (One) Rank of her husband with adequate interest to her.

e) To direct the respondents to pay to the applicant family pension money according to the aforesaid actual fixation and calculation of pay scale, Basic pay and Grade-I (One) Rank of her husband to her month by month.

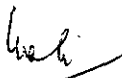


f) To direct the respondents to give the applicant all benefits and facilities according to the aforesaid actual fixation and calculation of pay scale, Basic pay and Grade-I (One) Rank of her husband.

g) Other relief or reliefs to which initially the husband of the applicant and thereafter applicant is entitled to get according to law."

2. Heard both Ld. Counsel, examined pleadings and documents on record.
3. The submissions of the applicant, as made through her Ld. Counsel, is as under:

- (i) That, her spouse, an ex-employee of the respondent authorities, had joined his service on 16.05.1950 and superannuated on 31.03.1987.
- (ii) That, although the status of the ex-employee was ESM Gr. I, he was erroneously considered as ESM Gr. II and his retirement benefits were *ab initio* erroneously calculated by treating him as an ESM Gr. II.
- (iii) After the ex-employee expired on 21.11.1990, his widow's family pension was decided as far below her entitlement, and, accordingly, prior to moving this Tribunal, the widow had made several representations to the respondent authorities and, after her intense persuasion, the respondents ultimately revised the status of the ex-employee in ESM Gr. I in their revised PPO dated 21.01.2014 (Annexure-A/13 to the O.A.)
- (iv) As the enhanced salary of the ex-employee from the date of his appointment as ESM Gr. I and consequent benefits of ACP and MACPs, has not been released with resultant enhancement in the monthly pension due to his widow/applicant, being aggrieved, the applicant has approached the Tribunal for aforesaid relief.



4. The respondents have controverted the claim of the applicant by arguing as follows:

(i) Late Birendra Kumar Sarkar was appointed as a Khalasi in scale of Rs. 30-35/- on pay Rs. 30/- w.e.f. 16.05.1950. He was promoted as ESM in the Scale of Rs. 110-180/- on pay Rs. 110/- w.e.f. 16.05.1961 and, thereafter, was promoted to ESM Gr. II in the scale of Rs. 330-480/- w.e.f. 01.01.1973 and he retired from service in the same capacity w.e.f. 31.03.1987.

(ii) The scale of Rs. 330-480/- was revised in 5th CPC as Rs. 4000-6000/- and as such the consolidated enhanced family pension of his widow was fixed at Rs. 2,289/- and normal pension was fixed at Rs. 1,396/- vide calculation sheet of revised PPO.

(iii) Although, the service records of ex-employee are not readily traceable, on the representation of the applicant in the year 2005, the case was examined by the competent authority whereupon it was decided that the pension and family pension was indeed fixed correctly.

Respondents have further strengthened their argument with an instruction received and submitted during hearing, which states as follows:

"As records available in case file which reveals that the husband of the applicant was posted in construction organization on 31.10.1962 having lien in terms of para 240 of IREC Vol. I in open line i.e. in Signal and Telecommunication Deptt. at Katihar Division, N.F.Railway. The construction organization has own budgetary system where the organization may award higher grade promotion/monetary benefits according to funds available. The husband of the applicant was posted in construction organization in the capacity of ESM/Gr.II and was holding the lien of ESM Gr. II in open line. On repatriation to open line from construction organization where originally his lien was maintained posted back as ESM Gr.II and the pay what would have been available had he continued in open line was fixed. There is no irregularities in fixing up of the pension/family pension."



5. The sole point of controversy revolves around a factual dispute as to whether the ex-employee was ever appointed as ESM Gr. I in substantive capacity, which gives rise to claim for revised salary, resultant ACP/MACP benefits and subsequent enhancement of the family pension of the applicant.

6.1 The applicant has substantiated and justified her claim on the basis of revised PPO dated 21.01.2014 (Annexure-A/13 to the O.A.), extracted as below with supplied emphasis:-

"DISBURSER'S/PENSIONER'S COPY:

Dated: 21-Jan-14

PPO No. KIR/PN/5077

DEBITABLE: AS PER ORIGINAL P.P.O.

1. Until further instructions and on expiration of every month: please pay to PRATIMA SARKAR, W/O/H/O LT. BIRENDRA KUMAR SARKAR, ex- ESM-I or His/Her beneficiary the revised Pension/Family Pension and reliefs as per details given below on or after 01.0
 2. Name of the Paying Bank/Treasure/Post Office:-
CENTRAL BANK OF INDIA, NAKSALBARI DARJEELING
 3. Saving Bank Account No. 9880
 4. Rate of self Pension: Rs. 0/- 4a. Pensioner's D.O.B: 16-MAR-29.
 5. Rate of Family Pension: 5b. Bnf. D.O.B.: 01-JAN-42.
 6. Bnf Name:- PRATIMA SARKAR
 - (A) Enhanced rate: Rs. 0/-
 - (B) Normal rate : Rs. 3500/-
 - (C) Relief: @0% w.e.f. 01.01.2006 and as increased from time to time.
- Arrears to be paid w.e.f. 01.01.2006 (pre-2006)/(post-2006) from next day retirement/death.

Re-Revised pension payment order in terms of Railway brd. Letter No. F(E)III/2008/PN1/12 dt. 11/02/2013 w.e.f. 24/09/2012.

7. Rate of self pension: Rs. 0/-
- (A) Enhanced rate: Rs. 0/- up to
- (B) Normal rate : Rs. 3500/- w.e.f. 29-MAR-94

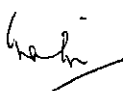
xxx

xxx

xxx

xxx"

6.2 The applicant would also point to a service certificate in page 19 of the paper book in which the designation of the ex-employee is noted as ESM/Gr. I/KNE. The service certificate is not authenticated by any Railway official, and,



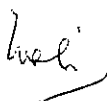
hence, no credence can be accorded to the same. On the other hand, Annexure-B/1 of the paper book, contains another service certificate issued on 24.03.1987 by the Railway authorities, in which column 7 describes the applicant's status while leaving service as ESM Gr.II.

Hence, the instant matter is riddled with contradictions.

6.3 The respondent authorities, while vociferously arguing that the applicant has retired as ESM Gr. II, also substantiated by the service certificate issued on 24.03.1987 by the Railway authorities, have failed to explain why a revised PPO was issued on 21.01.2014 designating the ex-employee as ESM Gr. I. Similarly, the applicant's averment that the ex-employee superannuated as ESM Gr. I in substantive capacity is controverted by the authenticated service certificate, which categorically certifies that the applicant, during superannuation, would have attained the status of ESM Gr. II.

7. Neither of the parties have been able to provide convincing explanation as to the disparity in the respective averments. The respondents have also admitted that the case, being nearly more than three decades old, the ex-employee's service records are not readily traceable/available with the respondents. Hence, we consider it a fit case to remand this matter back to the respondent authorities, particularly to respondent No.1, who is the Chairman, Railway Board, Govt. of India, to examine the background against which the applicant was issued the revised PPO on 21.01.2014 (Annexure-A/13 to the O.A.) in which the ex-employee's status was categorically noted as ESM Gr. I.

The said respondent authority after having concluded on the same, will take further action as follows:



- (i) In case it is established that the ex-employee had indeed superannuated as ESM Gr. I, then consequent benefits along with revised family pension should be released to the applicant.
- (ii) In case, however, the said respondent authority concludes that the revised PPO was issued erroneously and the ex-employee has actually retired as ESM Gr. II, then the PPO at Annexure-A/13 will require suitable revision with consequent effects.

The entire exercise may be concluded within a period of twenty weeks from the date of receipt of copy of this order.

8. With these directions, the O.A. is disposed of. M.A. 924/2017 filed for deletion of respondent No. 1 and 2 also stands disposed of accordingly. There will be no orders as to costs.

(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member (J)

RK