

Ex-gratia

GOVERNMENT OF INDIA (BHARAT SARKAR)  
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)  
( RAILWAY BOARD)

....

No. F(E)III/2000/PN1/Ex-Gr/5.

New Delhi

Dated: 06.05.2002


The General Managers & FA&CAOs/OSDs.  
Regional Railways & Production Units.

Sub: CAT/Mumbai Bench's judgement dated 1.3.2002  
dismissing the O.A. No. 140/2000 filed by  
Shri M.K. Ghogale, who had resigned from  
service as Turner, Central Railway Workshop,  
Matunga, for grant of ex-gratia payment.

....

A copy of judgement dated 1.3.2002 of CAT/Mumbai Bench,  
Mumbai dismissing the O.A. No. 140/2000 filed by Shri M.K. Ghogale  
who had resigned from service as Turner, Central Railway Workshop,  
Matunga, for grant of ex-gratia payment in terms of Board's  
letter No. F(E)III/97/PN1/Ex-Gratia/5 dated 27.1.98 is forwarded  
herewith for information and guidance. It is desired that in  
respect of similar applications, if any, being contested by your  
Railway before CATs/Courts or OAs to be filed in future, effective  
counterpoints should be filed in consultation with the conducting Railway  
counsel, praying for dismissal of the applications on the basis of  
forementioned judgement.

Please acknowledge receipt.

  
S. SREERAM  
Dy. Director Finance (Estt.) III.,  
Railway Board.

As: As above.

Copy to:

EDPC-I, DPC, EDV(E), DS(D), EDE (Res), EDE, JS, JS(G), JS(E), DE(G),  
Branches E(G), ERB-III, E(O)I, II, III & (CC), PC-III, IV, V,  
(P&A)I, II & ERB-I., ERB-V.

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E(P&A)I, II & ERB-I., ERB-V.



CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

S.No. 24/c

O.A.Nos.140/2000 and 664/2000

Dated this Friday the 1st Day of March, 2002.

Hon'ble Shri Justice Birendra Dikshit, Vice Chairman  
Hon'ble Shri M.P. Singh, Member (A).

Smt.Kamal Madan Ghogale  
wife of Late Shri Madan  
Krishna Ghogale, Ex.Turner,  
working under Deputy Chief  
Electrical Engineer (Genl),  
Central Railway Work Shop,  
Matunga and

Residing at:  
Jariwala Bldg.,  
9/A, Tilak Mandir Road,  
Vile Parle (E),  
Mumbai - 400 057.

.. Applicant

(By Advocate Shri R.S. Tulaskar)

Versus

1. Union of India, through  
the General Manager, Central Railway,  
Chhatrapati Shivaji Terminus, Mumbai.

Deputy Chief Electrical Engineer  
(Genl), Central Railway Workshop,  
Matunga, Mumbai - 400 057.

3. Chairman,  
Railway Board, Rail Bhavan,  
New Delhi.

.. Respondents.

O.A.No.664/2000

Shri I.H. Gurdasani,  
Ex. Clerk, working under  
General Manager, Western Railway  
Head Quarter Office, Establishment  
Branch, Churchgate and

Residing at :-  
G/1, Pushpa Kamal Society,  
Block No.969, Station Road,  
Ulhasnagar - 421 003

.. Applicant.

( By Advocate Shri R.S. Tulaskar )

Versus

...2..

1. Union of India, through  
the General Manager,  
Western Railway, Churchgate,  
Mumbai.
2. Chief Personnel Officer,  
Western Railway, Churchgate,  
Mumbai.
3. Chairman,  
Railway Board, Rail Bhavan,  
New Delhi.

.. Respondents.

( By Advocate Shri V.S. Masurkar )

ORDER (Oral)  
{ Per: Shri M.P. Singh, Member (A) }

As the issue raised by the applicant in both the OAs are identical, we proceed to decide these OAs by passing a common order.

OA 140/2000

The applicant in this O.A. has challenged the order dated 9.7.1998 whereby he has been informed that he is not entitled for ex-gratia pension.

The applicant in this case was appointed as Turner in Central Railway on 26.12.1936. He resigned from service with effect from 1.1.1960. The Railway Board vide its letter dated 27.1.1998 extended the benefit of ex-gratia pension to SRPF (C) beneficiaries who retired between the period 1.4.1957 to 31.12.1985 subject to the condition that such persons should have rendered at least 20 years of continuous service prior to their superannuation. The applicant in this case has 23

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years of continuous service. He, therefore, submitted his application to Respondent No.2 for grant of ex-gratia pension. However the same was rejected by respondents by their letter dated 9.7.1998, hence he has filed this O.A. claiming the relief by praying for directions to respondents to grant him ex-gratia pension in terms of Railway Board's letter dated 27.1.1998 with effect from 1.11.1997 with arrears.

3. The respondents in their reply have stated that the grant of ex-gratia pension to SRPF beneficiaries is a subject to condition that such person should have rendered at least 20 years of continuous service prior to their superannuation. However, admittedly in the instant case the applicant has resigned from Railway service on his own accord way back on 2.1.1960. Therefore the aforesaid letter dated 27.1.1998 is not applicable in the instant case as the applicant has not retired on superannuation. In fact the Railway Board's letter dated 23.1.1967 clearly stipulates that those who resigned from service less than 30 years of service before superannuation are not eligible for EGP benefit, hence in view of the submission made by the applicant, O.A. lacks merit therefore deserves to be dismissed.

4. We have heard learned counsel for the parties. During the course of the argument the learned counsel for  
...4..



the applicant has submitted that the resignation submitted by the applicant should be treated as voluntary retirement and therefore he is entitled for the grant of ex-gratia pensionary benefits. To support his claim he relied upon a catena of judgement including the judgment of Jabalpur and Mumbai Bench of the Tribunal in O.A. No.623/91 decided on 13.10.1995 and O.A. 671/99 decided on 4.5.2000 respectively. He also relied upon the judgement of Hon'ble Supreme Court in the case of J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs./ State of U.P. (1990 SCC (L&S) 570). On the other hand the learned counsel for the respondents has submitted that para 2 of the scheme for the grant of ex-gratia payment issued vide letter dated 27.1.1998 clearly states that ex-gratia payment is not admissible to (a) those who were dismissed / removed from service and (b) those who resigned from service. In support of his claim he relied upon the judgment of the Mumbai Bench of the Tribunal in O.A.No.1028/97 decided on 21.12.2000 and the judgment of Hon'ble Supreme Court <sup>in</sup> ~~in~~ the case of Union of India and others Vs Rakesh Kumar etc. [2001 (1) SCSLJ 453]. In this judgment the Hon'ble Supreme Court has held as under:-

" Learned counsel for the respondents submitted that on the basis of G.O. number of persons are granted pensionary benefits even though they have not completed 20 years of service, and, therefore, at this stage, Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of BSF are governed

...5...

by CCS (Pension) Rules. CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the force who resigns and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary pension. Therefore, by the erroneous interpretation of the rules if pensionary benefits are granted to someone it would not mean that the said mistake it would be perpetuated by direction to the Court. It would be unjustifiable to submit that by appropriate writ, the Court should direct something which is contrary to the statutory rules".

In view of the ratio laid down by the Supreme Court, it would be unjustifiable to <sup>hold</sup> ~~submit~~ that by appropriate writ, the Court should direct something which is contrary to the statutory rule. For the reasons recorded above, we do not find any merit in the O.A and <sup>The same is</sup> ~~is~~ dismissed. No costs.

O.A. 664/2000 also stands dismissed.

SJ-  
( M.P. Singh )  
Member (A)

SJ-  
( Birendra Dikshit )  
Vice Chairman.

H.

certified True Copy

Date: 12/11/2004