

(2018) 11 CAT CK 0072

In the Central Administrative Tribunal

Case No : Original Application No. 3785 Of 2017

Premwati

APPELLANT

Vs

Union Of India Through The General Manager And Ors

RESPONDENT

Date of Decision : 29-11-2018

Acts Referred:

Citation : (2018) 11 CAT CK 0072

Hon'ble Judges : A.K. Bishnoi, Member (A)

Bench : Single Bench

Advocate : Yogesh Sharma, S.M. Arif, Shailendra Tiwary

Final Decision : Allowed

Judgement

1. The applicant has filed the instant OA claiming the following reliefs:

"(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 8.6.2017(Annex. a/1) only to the extent of not granting the interest on the delayed payment of ex-gratia compensation, declaring to the effect that the whole action of the respondents not granting the interest on the delayed payment of Lump-sum-Ex-gratia compensation of Rs. 5 Lakhs to the applicant, is illegal, arbitrary, against the law of the land and consequently to pass an order directing the respondents to grant the interest on the delayed payment of Lum-sum Ex-gratia compensation of Rs. 5 Lakh to the applicant from due date till the date of payment of compensation with 18% interest.

(ii) That the Hon'ble Tribunal may graciously be pleased to pass an order of awarding heavy cost on the respondents and in favour of applicant, for not granting the interest on delayed payment of ex-gratia compensation amount to the applicant and compelled the applicant to approach the Hon'ble Tribunal.

(iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation."

2. The case of the applicant is that her husband Sh. Jai Bhagwan died while working as Gangman in Bikaner division while performing his duties, on 25.10.1997. As per the Railway Board circulars dated 05.11.1999, and 11.9.98 the wards of the Government servants are entitled to ex-gratia payment of Rs. 5 Lakhs. However, no such payment was made to the applicant's family following which a legal notice was sent to the respondents and when no reply was received, she filed OA No. 4314/2016 before this Bench of the Tribunal. This Tribunal, on 18.01.2017 passed the following orders:

"4. In the circumstances, the OA is disposed of, at the admission stage, without going into the merits of the case, by directing the respondents to consider the legal notice (Annexure A-1 dated 01.07.2016) and pass appropriate reasoned and speaking order within 90 days from the date of receipt of a copy of this order, in accordance with law. No costs."

3. The respondents in the counter reply while admitting that the husband of the applicant was working as Gangman in Northern Railway and died while performing his bonafide duty on 25.10.1997 have submitted that no cause of action has accrued to the applicant as no enforceable right of the applicant has been infringed by the orders of the respondents. They have already paid an amount of Rs. 5 Lakhs as ex-gratia compensation to the applicant vide order dated 08.06.2017 and there is no rule to pay interest on ex-gratia compensation amount. Further, the applicant has herself represented for the first time on 01.07.2016 through legal notice and as the delay is attributable to the applicant, she is not entitled to payment of interest.

4. The respondents have further averred that the OA is barred by res judicata/ constructive res judicata as the applicant had earlier approached this Tribunal vide OA No. 4314/2016 praying for grant of lump sum ex-gratia sum of Rs. 5 lakhs with 18% interest which was disposed of by this Tribunal vide order dated 18.01.2017.

5. Heard learned counsel for both the sides.

6. Learned counsel for the applicant while arguing the case has referred to the judgment of this Tribunal in OA No. 1103/2016 titled Bimla Devi vs. Union of India & Anr.. I find that the facts of the present case are similar to the case referred above. The relevant portions of the judgment are reproduced below for clarity:

"6.I have considered the arguments of the learned counsel for the parties and also perused the pleadings and the documents annexed thereto. It is not in dispute that in terms of the OM dated 11.09.1998 of DP&PW, which the Railways have also adopted, the applicant was eligible for receiving the ex-gratia amount of Rs. 5 lakhs. Apparently, due to the transfer of Gurgaon Railway Establishment from the administrative control of Bikaner Division of North-Western Railway to Delhi Division of Northern Railway, some confusion arose in regard to the processing of the claim and consequently in the release of the ex-gratia amount

to the applicant. Further, it is to be noted that the respondents swung into action only after the receipt of the legal notice dated 01.06.2015 from the applicant and after the Tribunal's order dated 08.10.2015 in OA No.3707/2015 filed by the applicant. Finally, the ex-gratia amount was released vide Annexure A-1 letter dated 12.01.2016. Hence, it cannot be denied that there has been inordinate delay in release of the ex-gratia amount to the applicant. Needless to say that it was obligatory on the part of the employer-department to release the ex-gratia amount to the kith and kin of the Railway employee, who dies in harness in performance of his duties.

7. It is an admitted fact that applicant's husband had died in performance of his duties on 20.04.1998. Even if it is assumed that some reasonable amount of time was required at the end of the respondents to process the claim of the applicant for release of the ex-gratia amount, such reasonable period could be at the most, six months.

8. As noticed hereinabove, the applicant's husband died on 20.08.1998 whereas ex-gratia amount has finally been released on 12.01.2016. Under the circumstances, I am of the view that the applicant is entitled for receiving interest from the year 1999 to 2015, i.e., for 16 years. I further feel that ends of justice would meet by ordering payment of simple interest @ 8% per annum for this period."

The applicant has also relied upon a decision of this Tribunal in OA No. 906/2012 titled Sarita Devi vs. UOI & Ors. The relevant portion of the order is quoted below:

"15. Having given my careful consideration to the issues involved in the case and after careful perusing the records, we are of the concerned view that the impugned order of the respondents is not sustainable as it goes contrary to preponderance of evidence indicating death of Shri Dhananjay Singh attributable to accident while returning from Delhi and, therefore, the applicant is entitled to special benefits by way of grant of ex-gratia lump sum compensation to the applicant on account of death of her husband while in service in the course of employment. Accordingly, we quash the impugned order dated 28.11.2011 and set it aside. The respondents are directed to pay ex-gratia lump sum compensation to the applicant along with interest at the rate of 9% within three weeks from the date of receipt of certified copy of this order."

7. Though the entire facts of the above mentioned case are not similar to those in the present case, the part relevant to delay in payment of ex-gratia compensation and in case of delay, the requirement of payment of interest has been settled. As far as the issue relating to res judicata/constructive res judicata is concerned, a plain reading of the order of this Tribunal dated 18.01.2017 quoted in Para 2 above makes it amply clear that the OA was disposed of without going into the merits of the case. That being so, there was no finality to adjudication by this Tribunal and hence the doctrine of res judicata/constructive

res judicata would not apply in the present case.

8. Regarding delay on the part of the applicant in making the representation through legal notice, the respondents cannot take cover behind this plea. It was incumbent upon the respondents as per their own rules to make the payment of ex-gratia compensation. Thus, it was not essential for the family of the deceased employee to make a representation or stake a claim. As regards the contention of the respondent that there is no rule for the payment of interest on ex gratia compensation amount, when the delay in making payment is solely on account of the failure of the respondents to carry out their obligation as per their own rules, it does not require a separate explicit rule to specify that interest has to be paid in cases of delay. This is implicit and inherent in the rule relating to the payment of ex gratia compensation and flows as a natural corollary to it.

9. The respondents have made a reference to a judgment of Hon'ble Apex Court in the case of Ekta Shakti Foundation vs. Govt. of NCT of Delhi but they have not mentioned the context in which it is applicable to the present case. Having gone through the judgement of the Hon'ble Apex Court in the case referred above, I find that that the facts and law laid down in that case have no bearing in the present matter.

10. Under such circumstances, the OA is allowed with a direction to the respondents to pay interest on the ex-gratia compensation amount from the time when the said provision for payment of ex-gratia compensation vide order dated 11th September 1998 came into force till the ex-gratia amount was actually paid, at the applicable rate of interest of GPF within three months from the date of receipt of a certified copy of this order. No costs.