

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.255/2020

Dated this the 31st day of August 2020

CORAM:

Hon'ble Sh. Jayesh V. Bhairavia, Member (J)

Hon'ble Dr. A.K. Dubey, Member (A)

Rekhaben,
D/o.Gopalbhai N.Parmar,
Aged 40 years,
R/O:Pandya Farm, B/H Kartikey Society,
Chaklia Road, Dahod – 389 151.

(By Advocate Ms.S.S.Chaturvedi)

Applicant

Vs.

1. Union of India,
Noticed to be served through,
General Manager,
Western Railway,
Churchgate,
Bombay 400 020.

2. The Dy. Chief Material Manager,
Western Railway, Sabarmati
Ahmedabad – 380 005

3. Chief Account Officer,
Western Railway, Asharwa,
Ahmedabad – 380 005

Respondents

(By Advocate Mr.M.J.Patel)

O R D E R (ORAL)

Per:Jayesh V.Bhairavia, Member (J)

1. The applicant has sought relief in this OA is as under:-

“8.1 Lordships be pleased to admit this petition. And be pleased to issue order quash and setting aside order

no.E 789/5/1003 dated 25.11.2019 (Annexure A/1). And be pleased to direct the respondent to release the family pension to the applicant from the due date with 18% interest with all consequential benefit.

8.2 That the Hon'ble Tribunal may be kindly pleased to call for the entire record of family Pension of the applicant's in possession of the respondent for its kind perusal."

2. The brief facts of this case are as under:-

2.1 It is contended that the father of the applicant was Railway employee.

He had worked as DMS/1/GS/SBE and retired on 30th June 2003 on superannuation. He died on 17.07.2003. In his Pension Pay Order (Annexure A/2) the applicant name was mentioned in the details of family members. After the death of her father, the widow of the deceased employee i.e., mother of the applicant was paid family pension. The applicant was residing with her mother as dependent and subsequently, got married on 22.05.2005. However, due to domestic problem, the husband of the applicant deserted her and did not call her back to his home. The applicant delivered a child and since her husband did not take her to his home, she and her child was compelled to stay along with her mother as her dependent. The applicant and her family belongs to downtrodden community and in their society the customary divorce has been recognised, accordingly, with the intervention of elder members of the family, the customary divorce of the applicant and her husband was took place. The customary divorce was declared by both the parties on Rs.100 Stamp Paper on 15.12.2008 (Annexure A/3).

2.2 It is contended that after the divorce, the applicant and her minor child continued to stay along with her mother as her dependent. The

applicant does not get any financial assistance from any source and she has to survive only with financial support from her mother.

2.3 The respondents had issued revised PPO of 6th CPC dated 28.04.2011 in favour of mother of the applicant (Annexure A/4). The mother of the applicant expired on 27.06.2013 (Annexure A/5).

2.4 After the death of her mother, the applicant had approached the office of respondent No.2 and requested to grant her family pension since she is divorced daughter of the pensioner. However, the respondent had informed the applicant that customary divorce is not valid and further advise to obtain divorce decree from the Civil Court and written the application of the applicant for grant of family pension.

2.5 The applicant had filed the divorce petition under Section 13 of the Hindu Marriage Act being HMP No.10/2015 before the Court of Principal Senior Civil Judge at Dahod. The said petition of the applicant was allowed and the marriage of the applicant with Maheshbhai Kalubhai Baria was dissolved by order below Ext.22 dated 29.04.2016 (Annexure A/6).

2.6 Thereafter, the applicant had submitted her representation on 10.04.2018 (Annexure A/7) with all the required documents before the respondents and requested to grant her the family pension as divorced daughter of the pensioner. In response to it, the respondents had asked some more documents vide letter dated 18.05.2018 (Annexure A/8). In turn, the applicant vide her letter dated 13.06.2018 again submitted all the valid documents with the copy of decree of the court as well as the deed of customary divorce (Annexure A/9). However, vide impugned

order dated 28.11.2019, the application/representation of the applicant was rejected on the ground that as per the condition stipulated in Railway Board's Instruction i.e., RBE No.102/2017 dtd. 23.08.2017 (Annexure A/10) she was not eligible. Therefore, the present O.A.

3. The learned counsel for the applicant submitted that the respondents had erroneously rejected the claim of the applicant. The respondents had not passed any speaking order and only said that the applicant had not fulfilled the condition mentioned in RBE 23.08.2017. It is submitted that the said RBE referred the O.M. dated 19.07.2017 issued by GOI, Ministry of Personnel, PG & Pensions, Department of Pension and Pensioners Welfare(Annex.A/10) the para 6 of the said O.M. stipulates that :

"to grant family pension to a divorced daughter in such cases were the divorce proceedings had been filed in a competent court during the life time of the employee/pensioner or his/her spouse but divorce took place after the death-provided the claimant's fulfilled all other conditions for grant of family pension under Rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce."

It is further submitted that the Railway Board in its RBE No.102/2017 also declared that the instructions dated in O.M. dated 19.07.2017 by the GOI, the same shall apply mutatis mutandis on Railways, Rule 54 of the CCS (Pension) Rules mentioned in the aforesaid O.M. is corresponds to Rule 75 of the Railway Services (Pension) Rules, 1993. The said RBE and the instructions contained in the O.M. cannot restrict the right of divorced daughter to claim family pension based on customary divorce. In this regard, the applicant has placed reliance on the judgment passed by Hon'ble Bombay High Court in the case of Union of India through the General Manager

Central Railway Mumbai vs. Smt. Usha Eknath Patil rendered in Writ Petition No.6884/2016 decided on 03.04.2018 and submitted that Hon'ble High Court held that the RBE/O.M. stipulates the intention of Railway not to leave destitute woman without any means of livelihood and directed to grant family pension to the daughter whose divorce took place by way of customary divorce. It is further submitted that applicant was dependent of deceased Railway employee, i.e., late Shri Gopalsingh Nathusingh father of the applicant was alive. Thereafter, the mother of the applicant became pensioner and during her life time the divorce of the applicant took place and started residing with her as dependent divorced daughter and entitled to receive family pension on the death of said pensioner, i.e., mother of the applicant. The respondents have violated the statutory provision of Railway Services (Pension) Rules 1993 and arbitrarily rejected the claim of the applicant vide impugned order. Therefore, the said illegal order of the respondents required to be quashed and set aside and directions be issued for grant of family pension to the applicant as she is the divorced daughter of the said pensioner.

4. On receipt of the advance copy of the O.A., Standing Counsel, Mr.M.J.Patel appears for respondents and submits that in terms of Para 6 of O.M. dated 19.07.2017 the applicant had not placed any proof about filing of divorce proceedings before the competent court during the life time of the pensioner. The applicant had filed her divorce petition only on 24.02.2015 in the court of Principal Senior Civil Judge at Dahod whereas her mother i.e., pensioner expired on 27.06.2013. Therefore, applicant failed to fulfil the condition stipulates in the said O.M./RBE

(Annex.A/10), accordingly, the competent authority had correctly denied the claim of the applicant for grant of family pension.

5. Heard the parties and perused the material on record. Undisputedly, the customary divorce of the applicant took place during the life time of the pensioner Smt.Manjulaben G.Parmar i.e., widow of deceased Railway employee Gopalsing Nathusingh Parmar. The applicant got customary divorce on 15.12.2008. The applicant and her minor child were residing with the pensioner and remained dependent of her till she expired on 27.06.2013. Admittedly, the applicant's customary divorce proceedings were initiated and concluded during the life time of the said pensioner. Since the customary divorce was recognised in the community and society of the applicant there was no need or occasion for the applicant to obtain divorce decree from the court of law during the life time of the pensioner. After the death of the pensioner, applicant was advised to obtain the divorce decree from the court of law. Accordingly, she had obtained divorce decree dated 29.04.2016 from the Court of Principal Senior Civil Judge, Dahod. Thereafter, the claim of the applicant for grant of family pension was denied by the respondents vide impugned order dated 28.11.2019, mainly on the ground that the applicant had filed her divorce proceedings in a competent court after the death of the pensioner and as per the terms of RBE No.102/2017 which is based on O.M. dated 29.07.2017 (Annex. A/10) the divorce proceedings ought to have been filed in a competent court during the life time of the pensioner. Since the applicant has not fulfilled the said condition, her application was rejected by the respondents.

6. The issue about the eligibility of divorced daughter to claim family pension based on the customary divorce is now well settled by the Hon'ble High Court of Gujarat in the case of *Union of India vs. Mayuriben Jani Daughter of Shri Durgeshbhai Nandlal Jani* decided on 17.02.2020. It is appropriate to reproduce the observations and findings of the said judgment which reads as under:-

Para 15. "The provision of Rule 75 of the Family Pension Rules, in fact, is a benevolent piece of subordinate legislation and therefore it needs to be governed by the principles which required to be pressed into service for extending the benefit of the family pension to those who are in need thereof, as it is intended to benefit those family members who needs support. Bearing this proposition of law in mind, if one examines Rule 75 which is also in pari-materia with Rule 54 of the said Rules, would indicate that the family pension is available to the divorced daughter. The Rule does not recognize any further or other requirement to be eligible for receiving the family pension. The device in the form of guideline developed by the authorities and incorporated in Office Memorandum are, therefore, to be viewed as only facilitating tools to assess gauge and examine the cases of the divorced daughter to receive family pension on the basis of the eligibility. When the factum of customary divorce is well recognized by the provision of the Hindu Marriage Act with special emphasis upon Section 29(2), then perhaps rightly the author of Rule 54 and/or Rule 75 have not thought it fit to qualify the word "divorced daughter" by making it conditional that the divorce has to be declared by the competent Court, else it would perhaps amounted to improve upon the provision of Hindu Marriage Act, which unequivocally recognizes the customary divorce as a valid divorce provided the same is permissible under the community and the circumstances. The question, therefore, arises as to whether the respondents in the instant case, were having any justification to insist upon the divorce decree from the competent Court and were they justified in declining to act upon the customary divorce factum which have remain unchallenged before the authority and which have been recorded by the Tribunal in its orders at length and elaborately. Section 29(2) of the Hindu Marriage Act, read as under:

"Section 29(2):- Nothing contained in this Act shall be deemed to affect any right recognised by custom or conferred by any special enactment to obtain the dissolution of a Hindu marriage, whether solemnized before or after the commencement of this Act."

Para 16. In other words, it can well be said that when the factum of customary divorce in both the cases have not

been challenged by the authorities. Their insistence for divorce decree only from the competent Court indicating valid dissolution of marriage would not be justified. The Court hasten to add here that this proposition on the valid premise that there exists no dispute qua customary divorce, in other words, the factum of applicants having a valid customary divorce deed when not under challenge and has accepted, then its mere authentication in the form of dissolution of marriage by the decree of the competent Court, in our view, would be improving the provision of the Hindu Marriage Act without any authority of law and the benefit, therefore, which are enuring under Rule 54 and Rule 75 when it is not qualified in any other manner would have to be accorded to the divorced daughter also.

Para 17. As Bombay High Court has observed rightly in its judgment the important factor is the family in which the daughter is residing when the pensioner/recipient of the family pension dies. When the said factum has not been disputed in both the cases and when it is clearly recorded by the Tribunal as a fact that both the applicants were residing with the pensioner/recipient of the family pension, then the insistence for dissolution of marriage by the competent Court only by way of decree, in our view, was not justified.

Para 19. The petitioners are directed to see to it that the family pensions are accorded to the respondents from the date when they are entitled as per Rule 75 of the Rules and the payment be made on that basis as expeditiously as possible preferably within a period of 90 days from the date of receipt of copy of this order."

7. It can be seen that after referring the provisions of Family Pension Scheme for Railway Servants, 1964 it is also stipulated in Rule 75 of Railway Services (Pension) Rules, 1993 the Hon'ble High Court in the aforesaid judgment held that **the factum of applicants having a valid customary divorce deed when not under challenge and has accepted, then its mere authentication in the form of dissolution of marriage by the decree of the competent Court and would be improving the provision of the Hindu Marriage Act without any authority of law and the benefit, therefore, which are enuring under Rule 54 and Rule 75 when it is not qualified in any other manner would have to be accorded to the divorced daughter also.**

In the present case, undisputedly, the customary divorce of the applicant took place in the year 2008. It reveals from the records that

said customary divorce of the applicant was not disputed by the respondent. As noticed hereinabove, the claim of the applicant was denied by the respondents only on the ground that the divorce proceedings of the applicant before the competent court of law was not filed during the life time of the pensioner. At the same time, it is apt to mention that the customary divorce of the applicant took place during the life time of the pensioner i.e., the mother of the applicant who was receiving the family pension.

8. In view of the aforesaid discussion and in the light of the judgment passed by the Hon'ble High Court in *Union of India vs. Mayuriben Jani Daughter of Shri Durgeshbhai Nandlal Jani* (supra), we are of the considered opinion that the impugned order (Annexure A/1) suffers from infirmities and deserves to be set aside, accordingly, same is quashed and set aside.
9. Resultantly, the applicant's claim for grant of family pension deserves to be allowed, we allow this O.A. Respondents are directed to see to it that the family pension paid to the applicant from the date when she became eligible under Rule 75 of the Railway Services (Pension) Rules and the payment including arrears be made on that basis as expeditiously as possible, in any case within 90 days from the date of receipt of copy of this Order. No Cost.

(Dr.A.K.Dubey)
Administrative Member

SKV

(Jayesh V.Bhairavia)
Judicial Member