

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.304/2018
Dated this the 7th day of October 2020**

CORAM:

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

Ms Najmaben Umarbhai Kureshi,
Mazhar Majil,
Near Kajivad Masjid,
Bhavnagar. ... Applicant

(By Advocate Mr. Vyom H. Shah)

V/s

1. The Secretary to the Govt. of India,
Ministry of Communication & IT,
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi.

(Amendment carried out as per Hon'ble Court order dated 14/06/2018.)

2 Head Post office Bhavnagar,
Notice to be served through
Senior Superintendent 366,
High CT Road,
Nawa Para, Bhavnagar, Gujarat. ... Respondents

(By Advocate Ms. R.R.Patel)

O R D E R (Oral)

Per: Jayesh V. Bhairavia, Member (J)

- 1 The present OA has been filed for direction upon the respondents to nominate the name of applicant for the purpose of grant of family pension being divorced daughter of deceased railway employee and also pray for quashing and setting aside the order dated 07.08.2017 issued by the respondents.
- 2 It is noticed that the applicant had submitted her application for grant of family pension being divorced daughter of late Mr.U.H.Kureshi the ex- Postal employee. In response to it the Superintendent of Post

Office, Bhavnagar vide impugned order dated 07.08.2017 informed the applicant that on verification of her case, it was observed by the DA (P) that her father Mr.U.H. Kureshi expired on 23.08.2014 and Ms.Saibibi (w/o late Mr.U.H.Kureshi) expired on 17.08.2004. Ms.Najmaben Kureshi divorced w.e.f. 30.06.2015 (i.e., she divorced after the death of her parents). Therefore, she was requested by the respondents to re-examine her eligibility to claim family pension being divorced daughter as per Ministry of Personnel, Public Grievances & Pension and Department of Pension & Pensioners' Welfare No.1/13 /09-P & PW (E) dtd.11.09.2013 and inform the office for further necessary action. (Annex.A/5). Aggrieved by the said letter/order dtd.07.08.2017, the applicant has filed the present OA

3 The brief facts as stated in the OA are as under:-

- 3.1 The father of the applicant late Mr.U.H.Kureshi was working with the postal department, Bhavnagar and had superannuated on 31.10.1986. Since then, he was receiving family pension in his name. The mother of the applicant was nominated member of the family, however, she expired on 17.08.2004.
- 3.2 Since the mother of the present applicant expired on 17.08.2004, the father of the applicant (ex-postal employee Mr.U.H.Kureshi) had preferred an application to the postal department through a letter dated 08.04.2009, requesting thereby to register the name of his divorced daughter i.e. Ms.Najmaben Umarbhai Kureshi as his nominee for family pension because after her divorce, she is residing with him since last 17/18 years (Annex.A/1).
- 3.3 In response to the application dtd.08.04.2009 (Annex.A/1), the Superintendent of Post Offices, Bhavnagar division through a letter dated 09.02.2010 informed the father of the applicant that his case will be taken up as and when the occasion arises. (Annex.A/2).

3.4 Thereafter the father of the applicant passed away on 23.08.2014. The applicant being divorced daughter and have never married again, preferred an application on 04.08.2015 to the Postal Department, Bhavnagar Division to confer her benefits of family pension. (Annex.A/3).

3.5 It is contended by the applicant that the respondent department did not reply to the application despite several reminders and thus, the applicant had served a notice to the department on 26.05.2017 (Annex. A/4). In response to it, the respondents vide impugned letter dated 07.08.2017 informed the applicant that on verification of her application, they found that her divorce had taken place w.e.f. 30.06.2015 i.e., after the death of her parents. Therefore, her eligibility to claim family pension being divorced daughter had to be re-examined.

4 The counsel for the applicant mainly submitted as under:-

4.1 The impugned order not nominating the applicant for the purpose of family pension is patently illegal, contrary to law and the object of grant of family pension to divorce daughter of the pensioner.

4.2 It is submitted that the husband of the applicant had given her a “Writter Talaqnama” on 15.09.1992 (Annex.A/6) and thereafter, she was compelled to reside at her parental house and accordingly she was residing with her parents being divorced daughter.

4.3 It is submitted that after the death of her father, she was advised that to become beneficiary for family pension being divorced daughter she has to obtain Divorce Decree from the Civil Court. Therefore, she had filed Special Civil Suit No.1/2014 in the month of December 2014 and the said suit was allowed vide order dtd. 30.06.2015 whereby the marriage which was solemnized between the applicant and her husband in the year 1988 was ordered to be dissolved under the provision of

Dissolution of Muslim Marriage Act, 1939 and decree was drawn accordingly by the Family Court Bhavnagar. In the said judgment, the learned family court observed that plaintiff i.e. applicant and the defendant were residing separately from each other for last 22 years. This finding in the judgment established the fact that infact “Talaq” of the applicant took place long back i.e., in the year 1992 during the life time of father of the applicant.

- 4.4. It is submitted that the respondents have not considered the customary divorce i.e., “Written Talaqnama” dtd. 15.09.1992 of the applicant and denied the claim on the ground that she had received divorce decree after the death of her father. It is submitted that the said stand of the respondent to deprive the applicant of family pension being divorced daughter is contrary to the object of welfare policy of the state, more particularly, to grant family pension to the divorced daughter. The respondents also failed to appreciate the fact that in the year 2009 during the life time of the pensioner i.e. father of the applicant, had declared that the applicant is his divorced daughter and her name was sought to be nominated since mother of applicant had expired long back. Therefore, the action on the part of respondents to deny the claim of applicant is illegal.
5. Per contra; the respondents have filed their counter reply and denied the claim of the applicant. By relying on the contention stated in the said reply, the standing counsel Ms.R.R.Patel for the respondents submits as under:-
 - 5.1 It is contended that late Mr.Umarbhai H.Kureshi was working as PA in Bhavnagar Division, retired on superannuation on 31.10.1986. He was holding PPO No.G-798 and also obtained pension upto the date of his death on 23.08.2014. Ms.Saibibi Umarbhai Kureshi (w/o the deceased postal employee) had already expired on 17.08.2004 prior to the death of said Umarbhai Kureshi.

5.2 It is further contended that after the death of said Umarbhai Kureshi, the applicant had applied for family pension on 04.08.2015 claiming to be unmarried daughter of late Umarbhai Kureshi. The details of family as per pedhinama dtd.01.03.2016 produced by the claimant indicate that said late Umarbhai Kureshi left behind one married son, two married daughters and one unmarried daughter i.e, the applicant herein.

5.3 It is further contended that the father of the applicant had preferred an application to the Department through a letter dated 08.04.2009 requesting the authority to file the nomination of the applicant for the family pension who was a divorcee and living with him since 1992. However ,at the relevant time, there was no provision to grant family pension to divorcee daughter, hence, it was informed that, the case may please be taken up as and when occasion arises.

5.4 It is submitted that the Ministry of Personnel, Department of Pension and Pensioners' Welfare vide OM dtd.28.04.2011 clarified that, the widowed / divorced /unmarried daughter of a Government servant/pensioner will be eligible for family pension w.e.f from the date of issue of respective orders irrespective of the date of death of the Government servant/pensioner.

Thereafter, vide OM dtd. 11.09.2013 further clarification was issued and according to which, the family pension to a widow/divorced daughter is payable provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents on the date of her turn to receive family pension comes (Annex.R/1colly).

Aforesaid instructions were further clarified by another OM dtd.19.07.2017 (Annex.R/2) in following terms:

"it was clarified that a divorced daughter who fulfils all conditions are eligible for family pension if decree of divorce had been issued by the competent court during the life time of at least one of the parents."

It is submitted that in the case of the applicant, the certificate for divorce decree issued by the Family Court Bhavnagar in her favour only on 30.06.2015 (Annex.R/2/1), i.e., much after the death of her parents. Therefore, in the light of restrictions as contained in para 4 of Clarification issued by Ministry of Personnel in its OM dtd.19.07.2017 (Annex.R/2) the applicant is not eligible to claim family pension as divorced daughter of late Umarbhai Kureshi.

6. The applicant has filed her rejoinder. The applicant has denied the contention of the respondents and reiterated the submissions in the OA. Additionally, it is stated that the stand taken by the respondent to deny the claim for family pension based on OMs dtd.28.04.2011, 11.09.2013 & 19.07.2017 (Annex.R/1 Colly) however, the respondents have completely ignored the fact that the marriage of the applicant was under Islamic Law, the marriage of the applicant was dissolved by her husband through “Written Talaq” in the year 1992 and since then applicant was residing as divorced daughter with her parents. The Customary Talaq was given by her husband, he remarried with other woman and got children. There was no need for the applicant to obtain a divorce decree from the competent court to annul the marriage between two parties since customary talaq took place in the year 1992 and same was recognised by the society. The respondents also failed to consider the fact that after her talaq, she remained unmarried and continued to stay at her parental house as dependant divorced daughter.
7. Further, it is submitted that the respondents have admitted in their reply that during the life time of her father, in the year 2009 he had submitted his application before the competent authority and thereby requested to include the name of the applicant as his nominee for the purpose of grant of family pension since she is his dependant divorced daughter and residing with him since last 17/18 years. Therefore, it is not correct on the part of the respondents to state that the marriage of the applicant was dissolved only in the year 2015. It is also argued

that the learned Family Court in its judgment categorically observed that since last 22 years applicant was separated due to Written Talaq given by her husband. Therefore, the separation and the customary Talaq is not in dispute. Hence the applicant claims that she is entitled to Family Pension being divorced daughter as per the policy declared by the respondents.

- 8 The learned counsel for the applicant has placed reliance on the common judgment dtd.10.02.2020 passed by the Hon'ble High Court of Gujarat in the case of Union of India vs. Mayuriben Jani Daughter of Shri Durgeshbhai Nandlal Jani, (R/SCA No.4792/2019) & in the case of Union of India vs. Sudhaben Nayak, D/o late Dinanath Nayak and Subhadraben Nayak (R/SCA No.324/2018) and submitted that the insistence for divorce decree issued by the competent court indicating valid dissolution of marriage for grant of benefit of family pension to the divorced daughter would not be justified since the customary divorce by way of talaq is unequivocally recognized under Islamic Law as like customary divorce under the Hindu Marriage Act.
- 9 Heard the parties and perused the material on record.
- 10 It is noticed that during the life time of applicant's father i.e., late Mr.Umarbhai Kureshi, who had submitted an application dtd.08.04.2009 before the respondents and requested the said authority that since his wife (i.e, the mother of the applicant) expired on 17.08.2004, the name of his divorced daughter viz., Ms.Najmaben Kureshi (i.e., applicant herein) residing with him as the dependant since last 17/18 years be registered as his nominee for grant of family pension. In response to said application the respondent vide its letter dtd. 09.02.2010 (Annex.A/2) the Superintendent of Post Office, Bhavnagar had returned the said application with the observation that his request will be taken up, as and when occasion arises. It is important to mention here that in the said reply, the respondents had not stated or informed in any manner to the ex-employee that there was no provision to grant family pension to divorced daughter or to

register or nominate the name of the divorced daughter, who was stated to be the defendant on the pensioner of the respondent department. However, respondents in their written reply in this OA contended that the application filed by father of the applicant was not accepted and same was returned by the respondents for the reason that there was no policy to grant family pension to the divorced daughter. It can be seen that the respondents have admitted that during his lifetime, father of the applicant had submitted an application seeking nomination of his daughter i.e. the applicant herein who was a divorcee daughter for grant of family pension. Therefore, it cannot be said that respondents were not aware that divorce of the applicant had taken place before the death of her father.

11 It is further noticed that after the death of father of the applicant in the year 2014 (i.e. on 23.08.2014), she had submitted her application dtd. 04.08.2015, for grant of family pension to her being a divorced daughter of late Shri Umarbhai Khureshi (ex-employee) by producing the copy of “Written Talaqnama” dtd.15.09.1992 of her husband along with other document. However, as noted herein above, for consideration of her claim the respondents insisted for divorce decree issued by the competent authority. Accordingly, she had filed Special Suit No.1/2014 for Dissolution of the Marriage under the provision of Dissolution of Muslim Marriage Act, 1939 before the Family Court, Bhavnagar.

At this stage it is apt to mention that after considering the plea of plaintiff/petitioner (i.e. applicant herein) and the defendant (i.e. ex-husband of applicant herein), the learned Family Court, Bhavnagar in its judgment dtd. 13.07.2015 recorded its finding that the defendant has sent “Written Talaqnama” on 15.09.1992, Further, it was also observed in the said judgment that “the defendant has specifically admitted that he had given “Talaq” to the plaintiff and also sent “Talaqnama”.” The learned Family Court by accepting the plea of plaintiff and the defendant, finally ordered that “the marriage

solemnized between the parties on 20.02.1988 is dissolved under the provision of Dissolution of Muslim Marriage Act, 1939”
(Annex.R/2/1).

12 From the above, it can be seen that Divorce of the applicant by way of “Customary Talaqnama” had taken place in the year 1992. This fact clearly proves that the defendant had deserted the plaintiff i.e. (applicant herein) for more than 21/22 years. It is noticed that as there was no need to obtain Divorce Decree from competent court till the father of the applicant was alive, naturally the applicant had not obtained decree of Dissolution of her Marriage from the competent court. At the same time, the factual matrix as stated herein above suggest that customary Divorce of the applicant took place during the life time of her father and she continued to reside with him as Divorcee daughter.

13 The Hon’b;e High Court in the case Union of India vs. Mayuriben Jani Daughter of Shri Durgeshbhai Nandlal Jani(supra), it is noticed that while dealing with issue of denial of family pension to the Divorced daughter of ex-railway employee for not for not fulfilling the conditions stipulated in OM dated 11.09.2013 and 19.07.2017 (i.e. R/1 collectively produced in this OA) the High Court held 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 parimateria with Rule 54 of the said Rules, would indicate that the family pension is available to the divorced daughter. The Rule does not recognized 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 (CAT/AHMEDABAD BENCH/OA No.72/2019) 10 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 ensuring 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.”

- 14 In the present case there is no challenge to the “Talaqnama” which had taken place between the applicant and her ex-husband. Admittedly the customary divorce by way of “Talaqnama under Muslim Sariyat” was well recognised mode of dissolution of marriage of Muslim couple at the relevant time and no need arose for the applicant to obtain a Divorce Decree from competent court. At the same time fact remains that the Divorce of the applicant had taken place during the lifetime of her father. At the cost of repetition undisputedly the father of the applicant during his lifetime declared before the respondents to include/nominate the name of applicant as Divorced daughter for grant of family pension to her and in response to it the respondents had conveyed that as and when occasion arises, same will be considered.
- 15 In view of aforesaid discussions I am of the considered opinion that the claim of the applicant for grant of family pension being divorced daughter deserves to be allowed. Accordingly, we allow this OA with a direction to the respondents to see to it that the family pension be paid to the applicant from the date when she became eligible and the payment including arrears be made on that basis without interest as expeditiously as possible, preferably within three months from the date of receipt of copy of this order. There shall be no order as to costs.

(Jayesh V Bhairavia)
Member(J)