

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

Original Application No.72/2019

Dated this the 21st day of August 2020

Date of Reserve: 31.07.2020

Date of Pronouncement: 21.08.2020

CORAM:

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

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

Babita Brahmdev Madan,
Daughter of Bramdev Madan,
Age:51 years,
A/15 Padmaprabhu Nagar Society,
I.O.C. Road, D Cabin,
Sabarmati, Ahmedabad – 380 019.

Applicant

(By Advocate Mr.Vaibhav V. Goswamy)

Vs.

1. The General Manager,
Western Railway,
Churchgate,
Bombay 400 020.

2. The Divisional Manager,
Western Railway,
Divisional Railway Manager's Office,
Pratapnagar,
Vadodara 390 004.

Respondents

(By Advocate Ms.A.B.Makwana)

O R D E R

Per:Jayesh V.Bhairavia, Member (J)

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

“8.1 To admit this application.

*8.2 To quash and set aside the order No.E/789/11/5/FP
dated 23.10.2018 issued by the DRM (E) BRC, which is*

at Annexure-A/1, as well as the order dated 21.05.2018 passed by the respondent DRM (E) BRC which is at Annexure-A/2;

8.3. To hold and declare that the action of the respondents in refusing to grant family pension to the applicant as bad in law, illegal and the same is against the revised PPO order issued subsequent to recommendation of 6th C.P.C. which is at Annexure-A/2.

8.4 Pending the admission, hearing and final disposal of this application, be pleased to direct the respondents consider the case of the applicant for family pension; and direct the respondents to pay the family pension to the applicant including arrears and interest on delayed payment from the date on which her mother passed away,"

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

2.1 Applicant claims that she is the divorced daughter of the deceased employee of the respondent therefore, she is entitled to get family pension under the provisions of Railway Pension Rules.

2.2 The application of the applicant dated 27.09.2018 for grant of family pension to her was rejected by DRM(E) BRC Western Railway, Division Office, Pratap Nagar, Vadodara vide order dated 13.10.2018, (Annexure A/1), as also the application dated 18.05.2018 was rejected by the respondent vide impugned order dated 21.05.2018 (Annexure A/2), both the orders are impugned herein.

3. It is submitted that the representation/application of the applicant was rejected mainly on the ground that the as per the Government of India, Ministry of Personnel, PG and Pension's letter dated 19.07.2017, in para 6, it is stated that the divorced daughter will be treated as valid to claim pension, when the divorce proceeding has been filed in a court during the life time of the employee/pensioners or his/her spouse. it was found by the respondent that the father of the applicant (deceased Railway employee) died on 20.07.2012 and mother of the applicant

was died on 17.02.2016 whereas, the applicant had filed her application for divorce in Family Court only on 21.02.2017 and decree of divorce was issued only on 11.09.2019. Since the applicant did not file her divorce proceeding during the life times of pensioners i.e. the mother of the applicant in the present case. Therefore, the claim of the applicant was not found eligible and accordingly, same was rejected.

4. It is submitted that the father of the applicant retired from the service on 28.02.1986, the applicant had obtained customary divorce long back in the year 2005 with mutual consent, thereafter, the applicant came back to her parents house and continue to stay along with the parents as their dependent divorced daughter.
5. After the retirement of her father he was receiving pension, in the revised PPO dated 24.12.2008 issued in favour of her father with the details of family members eligible for family pension with their date of birth was also mentioned in Column No.12. In the said PPO the name of the mother of the applicant as well as the name of the applicant were also mentioned (Annexure A/3). The said fact clearly indicate that applicant was dependent divorced daughter of the deceased Railway employee.
6. It is further submitted that the father of the applicant passed away on 20.07.2012 and thereafter mother of the applicant continued to get family pension. After her death on 17.02.2016, she had submitted her representation for grant of family pension. The applicant has requested the respondent that she was, after her divorce residing with her mother and she hold the duly registered customary divorce deed which was

registered with the office of Sub Registrar, Gandhinagar bearing registration No.GDR/6237/1/6 dated 18.08.2005 (Annexure A/9) therefore, she be considered for family pension being divorced daughter of pensioner. However, she was advised that in order to avail the benefit of pension as divorced daughter, she has to obtain divorce decree from the competent court. Accordingly, she had filed her divorce proceeding on 21.02.2017 before the Family Court, Ahmedabad being Family Suit No.351/2017 which came to be allowed by order dated 11.09.2017 and the marriage of applicant has been declared as dissolved. The decree below Exhibit 13 in said Family Suit No.351/2017 was issued on 11.09.2017 (Annexure A/9)

7. On receipt of said divorce decree dated 11.09.2017 the applicant again approached the Office of the respondent and submitted her application on 27.09.2018 (Annexure A/8). In the said application, applicant had also stated that since her divorce on 18.08.2005, she was staying with her parents and after their death, she was in great distress being unemployed, had no regular income to run her livelihood. Her father had made application and approached the respondents' office with necessary evidence for entering her name at the time when PPO was to be revised and accordingly, in the revised PPO was issued on 24.12.2018, and therein the name of the applicant was included by the office of the respondent as dependent divorced daughter. Now, the applicant had also obtained the divorce decree dated 11.09.2017 from the Family Court, Ahmedabad and considering the same as also the registered customary divorce deed dated 18.08.2005, she preferred her application to the respondents for grant of family pension since the proceeding for

divorce had started in the life time of her parents (Annexure A/8). However, again vide impugned order dated 23.10.2018 (Annexure A/1), respondents rejected the claim on the ground that during the life time of family pensioners of deceased employee the divorce proceeding had not been filed by the applicant. The said reason assigned by the respondent are contrary to the facts on record and illegally deprived the applicant of family pension, the counsel argued.

8. It is further submitted that the Family court had declared the marriage of the applicant as dissolved from the date of decree under Section 13(b) of the Hindu Marriage Act, 1955. The customary divorce dated 08.08.2005 was registered before the office of the Sub Registrar having registration No.GDR 6237 on 18.08.2005 (Annexure A/9). Therefore, the applicant has complied with the condition to become eligible for family pension. However, the respondent had rejected the claim only on the ground that applicant had not filed divorce proceeding during the life time of pensioners. The counsel for the applicant submits that the finding of the respondents was erroneous and same is required to be quashed and set aside.

9. On the other hand, the respondents had filed the reply and denied the claim of the applicant. Counsel for the respondent submitted that revised PPO not issued in favour of the applicant as there was no details mentioned by the ex-employee during his life time about her dependent divorced daughter. The father of the applicant had never intimated the office of the respondent about the customary divorce of the applicant which was stated have been obtained in the year 2005. It is further submitted that as per the Rules, though the customary divorce is treated

as divorce, but the same has to be confirmed by order of decree of divorce by the court and as per the Railway Board letter dated 23.08.2017, the divorce will be treated as valid and divorced daughter can claim family pension when the divorce proceeding filed in court during the life time of the employee/pensioners, in the case of the applicant, since the applicant herself has admitted that she had filed her divorce proceeding on 21.02.2017 being Family Suit No.351/2017 before the Family Court, Ahmedabad, and the said Suit of the applicant was decreed in favour of her on 11.09.2017. Since the parents of the applicant expired on 20.07.2012 and 17.02.2016 and thereafter, only on 21.02.2017 the applicant has filed divorce proceeding. Therefore, it cannot be said that divorce proceeding was filed during the life time of the pensioners (the parents of the applicant in the present case). Accordingly, the respondent did not find the applicant to be eligible for grant of family pension as divorced daughter. The impugned orders are just and proper and applicant is not entitled for any relief sought in this O.A., the counsel for respondents averred.

10. The applicant has filed her rejoinder and reiterated the submission. Additionally, it is submitted that the respondents totally failed to take into consideration the fact that the applicant's marriage was dissolved in the year 2005 and in this regard registered customary divorce deed was very much on record, the name of applicant was included in revised PPO issued in the year 2008 at the relevant time, the father of the applicant was alive therefore, it cannot be said that divorce proceeding was not initiated by her during the life time of pensioners. The respondent had

wrongly rejected the claim of the applicant by relying upon O.M. dated 19.07.2017, she contended.

11. Learned counsel for 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 dated 03.04.2018. In the said case, the Hon'ble Court had considered the provision of OM of Railway Board dated 19.07.2017 and held that the "said O.M. clarifies the earlier O.M. dated 11.09.2013 and further stipulates that daughter, if eligible may be granted family pension, the said O.M. also stipulates the intention of Railway not to leave destitute woman without any means of livelihood. This object and intention cannot be defeated in the present case."

It is further held in the said judgment that "from the date of customary divorce dated 21.07.1992, the petitioner was not residing with her husband and therefore, returned to the member of family of her deceased father. She was therefore residing with her mother, who expired on 28.12.1999. When the provision entitles unmarried or a divorced or a widowed daughter to family pension, the court found that the petitioner Ms.Usha was entitled for family pension."

12. Learned counsel also placed reliance on the recent order passed by Hon'ble High Court of Gujarat in R/SCA Nos.4792/2019 and 324/2018 decided on 17.02.2020 in the case of *Union of India vs. Mayuriben Jani Daughter of Shri Durgeshbhai Nandlal Jani* and submitted that Hon'ble High Court after referring the provisions of Railway Pension Rules, as also the judgment passed by Hon'ble Bombay High Court in the case of

Smt. Usha Eknath Patil (supra) and in para 16 it was held that “the factum of a valid customary divorce deed when not under challenge and has been 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 Hindu Marriage Act without any authority of law and the benefit, therefore, which are enduring under Rule 54 and Rule 75 when it is not qualified would have to be accorded to the divorced daughter also”. Accordingly, the counsel for the applicant submitted that the reasons stated in the impugned order are contrary to the law laid down by the Hon’ble Gujarat High Court.

13. Heard the parties and perused the material on record.
14. In the present case, it is noticed that applicant is the daughter of late Shri Brahmdev Sohanlal Madan (erstwhile Railway employee) and Mrs. Sudeshrani. It is also not in dispute that the applicant’s marriage was dissolved by way of customary divorce on 18.08.2005 and the deed of said customary divorce was duly registered with the office of Sub Registrar, Gandhinagar having No.6237 (Annexure A/9). The said customary divorce is not rebutted by the respondent.

It is further noticed that the name of the applicant was included in the revised PPO issued by the respondent during the life time of father of the applicant. After the death of father of the applicant, on 20.07.2012, her mother (i.e., widow of deceased Railway employee) was granted family pension by the respondent and she was expired on 07.02.2016.

It is seen that after the customary divorce in the year 2005, the applicant started residing with her parents as dependent divorced daughter. Her representation for grant of family pension being divorced daughter was rejected mainly on the ground that applicant had not filed divorce proceeding in a competent court during the life time of pensioner (i.e., parents of the applicant) as per the OM dated 19.07.2017. In view of the said factual matrix, the question required to be answered is whether the respondents were right in rejecting the claim of the applicant being divorced daughter for grant her family pension in the present O.A. 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 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

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."

15. In the aforesaid judgment, It can be seen that after referring the provisions of Family Pension Scheme for Railway Servants, 1964 stipulates in Rule 75 of Railway Services (Pension) Rules, 1993 the Hon'ble High Court in 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 2005 and the deed for it was duly registered during the life time of Railway employee. The said customary divorce of the applicant, in the present case is not under challenge nor it is disputed by the respondent.

16. 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 orders (Annexure A/1 & Annexure A/2) suffer from infirmities and deserves to be set aside, accordingly, same is quashed and set aside.
17. 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 be paid to the applicant from the date when she become eligible under Rule 75 of the Railway Services (Pension) Rules and the payment including arrears be made on that basis as expeditiously as possible, preferably 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