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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

CALCUTTA BENCH

O.A. NO. 350/335 OF 2018

In the matter of :

Application under Section 19 of the
Administrative Tribunal Act, 1985;

-And-

In the matter of :

Smt. Lipika Sarkar (Barui)
daughter of deceased casual labour
Gopal Barui, residing at Village-
Matharangi, P.O.- Nilganj, District-
North 24 Parganas, Pin-700121.

.....Applicant.

-Versus-

1. Union of India, service through the
Secretary, Ministry of Agriculture
(Department of Agricultural Research
and Education), Government of India,
Krishi Bhavan, New Delhi-1

2. The Indian Council of Agricultural Research through its Director General, Krishi Bhawan, New Delhi-110001.

3. Central Research Institute of Jute and Allied Fibres, P.O. Nilganj Bazar, Barrackpore, District- North 24-Parganas.

4. The Finance and Accounts Officer, ICAR-Pension Authorising Unit-14, Central Fisheries Research Institute (ICAR), Barrackpore, Kolkata-700120.

5. The Finance and Accounts Officer, Central Research Institute of Jute and Allied Fibres, Barrackpore, P.O. Nilganj Bazar, Kolkata-700121.

6. The Senior Finance and Accounts Officer (Pension), ICAR, Krishi Bhawan, New Delhi-110021.

Respondents.

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.350/335/2018

Date of order : 19.9.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

LIPIKA SARKAR BARUI
VS.
UNION OF INDIA & OTHERS
(Indian Council of Agricultural Research)

For the applicant : Mr. A. Sarkar, counsel

For the respondents : Mr. S. Panda, counsel

ORDER

Bidisha Banerjee, Judicial Member

The applicant is divorced daughter of Late Gopal Barui, ex support staff (S.S.G.) in the Central Research Institute of Jute and Allied Fibres(CRIJAF), Barrackpore, who retired from government service on 31.12.1997, has preferred this O.A. to seek the following reliefs:-

"a) Quashing of the interdepartmental memo/communications dated 10.10.2017, Annexure -11 along with enclosures nos.4 and 5 therein;

b) Quashing of the interdepartmental memo/communications dated 23.11.2017, sent in continuation of the memo/communication dated 10.10.2017, Annexure A-11 both under the signature of the respondent no.4, being Annexure A-12 hereto whereby the applicant was once again denied family pension;

c) The quantum of monetary dues as given in the memo dated 23.11.2017, being Annexure A-12, being not in consonance with the amounts declared by ICAR before the Hon'ble High Court, cognizance of which has already been taken by the Hon'ble

Division Bench of the High Court, Annexure A-4 and A-5 hereto, let the sums be recalculated by adding to the said amount of Rs.528413/- (Rupees five lakhs twenty eight thousand four hundred and thirteen), as on 30.06.2013, plus further accrued amounts and current;

- d) Commencement of payment of family pension to the applicant, arrears and current, as per the memo dated 02.05.2017, of the respondent no.4, being Annexure A-1 hereto;*
- e) Interest at the rate of 18% and costs;*
- f) Any other further order or orders as this Hon'ble Court may deem fit and proper."*

2. The admitted facts are as follows:-

Sri Gopal Barui, ex support staff(S.S.G.) in CRIJAF, Barrackpore, retired from Government service on 31.12.1997 and died on 24.04.2001. His wife Smt. Sarmista Barui died on 05.11.1973, their daughter, Lipika Sarkar married on 06.12.1985, a divorce suit was filed on 07.04.2006 and Lipika Sarkar got divorced on 03.01.2007.

Prayer of Smt. Lipika Sarkar Barui for family pension was rejected by the respondent authorities on the ground that she was not a divorcee at the time of death of Gopal Barui on 24.04.2001 or in other words, her divorce took place much after her parent's death and family pension to a divorced daughter is permissible when the divorce proceeding has been filed in a competent court of law during the life time of the employee/pensioner of his/her spouse but here divorce



proceeding and the divorce took place much later and/or after the death of her parents.

3. Referring to the circular dated 19.07.2017 of Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners' Welfare, the respondent would submit that initially family pension was authorised to Smt. Lipika Sarkar, vide letter No. ICAR-CIFRI No. Audit/F.Pen/2524/2017/149 dated 02.05.2017 which was issued in terms of Government of India DOP& PW O.M.No.A/19/03-P&PW(E) dated 06.09.07(Annexure R-1) but subsequently the above authority for grant of Family Pension was withdrawn vide this office letter No. Audit/F.Pen/Misc./2017/663 dated 31.8.2017 in terms of Government of India DOP&PW(E) O.M.No.A/13/09-P&PW(E) dated 19.07.2017 wherein it has been communicated the grant of family pension to divorced daughter is permissible only when the divorce proceeding was filed in a competent court during the life time of employee/pensioner or his/her spouse, while divorce may have been ordered after the death.

4. Ld. counsel for the applicant at hearing would strenuously urge that this Tribunal has permitted divorced daughters to receive family pension based on their financial condition and not on the basis of the date of divorce or date of their widowhood: In support a decision in case of Srabani Bhattacharya (O.A.No.350/1772/2015 with M.A.No.350/163/2016) has been cited.

5. Ld. counsels were heard and records were perused.



6. Annexure R-1 to the reply reads as under:-

To
 The Finance & Accounts Officer,
 ICAR- Central Research Institute for Jute & Allied Fibres,
 Barrackpore, P.O. Nilganj Bazar,
 Kolkata- 700121, West Bengal.

Subject : P.P.O. No. CIFRI/2524 and G.P.O. No. 2542 Grant of family pension to Smt. Lipika Sarkar (Barui), divorced daughter of Late Gopal Barui, Ex- Support Staff.

Sir,

In pursuance of GID No.23@ under Rule 54 of CCS (pension Rules), 1972 read with G.I OM No. 1/19/03-P&PW(E) Dated 06.09.2007 on the subject mentioned above, I am to authorize you to pay Family Pension to Smt. Lipika Sarkar (Barui), divorced daughter of Late Gopal Barui, Ex- Support Staff @ 3,500/- (Rupees three thousand five hundred only) per month at normal rate w.e.f. 03.01.2007. Fixed Medical Allowance as (i) Rs. 100/- p.m. w.e.f. 03.01.2007 to 31-08-2008, (ii) Rs. 300/- p.m. w.e.f 01-09-2008 to 18-11-2014 and (iii) Rs. 500/-p.m. from 19-11-2014 onwards base on her option till she gets married, employment or starts earning whichever is earlier, subject to condition that her pension should be discontinued when the pensioner starts earning a sum of Rs.3500/- or more p.m from employment in Govt./Private Sector/Self-employment.

2. She is also entitled to Dearness Relief @ 6% as sanctioned by Govt. of India (Autonomous Body) from time to time on basic pension w.e.f. 03.01.2007 of Rs. 210.00.
3. The PPO (Both halves) and other relevant papers are enclosed herewith for payment of her pension from the Institute as desired:-

Smt. Lipika Sarkar (Barui), is being informed of this at the address given below. Her other particulars are also given below :-

Address Smt. Lipika Sarkar (Barui), C/o Late Gopal Barui,
 Vill- Matharangi, P.O. Nilganj Bazar, Dist:- 24
 Parganas (North), Pin-700121, West Bengal.
 Date of birth 01-01-1971 as per Voter ID Card.
 Mark of identification Cut mark on forehead.
 Height 5'-4".

Yours faithfully,

Finance & Accounts Officer

ICAR Pensions Authorising Unit-14

Finance & Accounts Officer

संकेतीय सामाजिक सुविधान संस्थान

Central Inland Fisheries Research Institute

बरकपুর/ Barrackpore

7. Since the right to receive family pension that accrued prior to introduction of OM dated 19th July, 2017 has been taken away by virtue of a subsequent O.M. i.e. dated 19.07.2017, Id. counsel for the applicant would submit that it was highly discriminatory and unconstitutional inasmuch as a subsequent clarification cannot take away the right that has accrued prior to its introduction and, therefore, would seek quashing of the letter dated 10.10.2017 as contained in Annexure A/11 which reads as under:-

SPEED POSTTelegram :FISHSEARCH
TELE :2592-1190
: 2592-1191

ICAR - Central Inland Fisheries Research Institute
BARRACKPORE - KOLKATA - 700120 WEST BENGAL

No. Audit/Pen/ Misc./2017 792.

Dated the : 10.10.2017

To
 Shri D.K.Sinha,
 Section Officer Law,
 Indian Council of Agricultural Research,
 Krishi Bhavan,
 Dr. Rajendra Prasad Road,
 New Delhi-110001.

Sub: W.P.C.T No. 421/2012 filed by Taramani -II & Ors. against Dr. S. Ayyappan,
 Secretary, D.G. ICAR- Krishi Bhavan, Ors.
 Ref: Council's Letter No. 27-03-2012-Law dt.11.09.2017.

Sir,

Please refer to Council's Letter dated 11.09.2017 forwarding therewith ICAR Finance Division letter no. FIN/10/04/2017-pension dated 17.08.2017 intimating therein that the CCS Pension Rule regarding grant of Family Pension are very much clear and unambiguous, therefore the decision to grant Family Pension to Smt. Lipika Sarkar (Barui), divorced daughter of Late Gopal Barui, Ex-Support Staff of ICAR - Central Research Institute for Jute & Allied Fibres, Barrackpore, P.O. Nilganj Bazar, Kolkata- 700121, West Bengal may be taken accordingly since, the clarification was sought vide this Office letter No. Audit/F.Pen/Misc./2017/572 dated 28.07.2017 (Copy enclosed)-regarding grant of Family Pension to eligible divorce daughter.

In view of the above, it is stated that in terms of Govt. of India, DOPT & PW OM No. 1/13/09-P&PW(E) dated 19.07.2017 (copy enclosed) the Authority issued for grant of Family Pension to Smt. Lipika Sarkar (Barui), vide this Office Authority No. Audit/F.Pen/2524/2017 dated 02.05.2017 (Copy enclosed) withdrawn vide letter No. Audit/ Pen/Misc./2017/663 dt. 31.08.2017 (Copy enclosed) since the decree of divorce neither issued by the competent court during the life time of the Pensioner/Family Pensioner nor the divorce proceedings had been filed in the competent court during the life time of the pensioner/Family pensioner.

Further, it is intimated that the Council's letter No. FIN/10/04/2017-Pension dated 17.08.2017 clarified the rule-pension for grant of Family Pension to Smt. Lipika Sarkar, whose petition No. is WPCT No. 503 of 2005 to party ICAR-Vs-Taramoni- II and others.

Thanking You,

Yours faithfully,

Encl: 1) No. Audit/F.Pen/Misc./2017/572 dt. 28.07.2017.
 2) DOPT & PW-OM No. 1/13/09-P&PW(E) dt. 19.07.2017.
 3) No. Audit/F.Pen/2524/2017 dt. 02.05.2017.
 4) No. Audit/ Pen/Misc./2017/663 dt. 31.08.2017.
 5) Council's letter No. FIN/10/04/2017-Pension dt. 17.08.2017

Finance & Accounts Officer
ICAR- Pension Authorising Unit-14

Ld. counsel for the applicant would place the decision of the Hon'ble Apex Court in case of **Ex Captain A.S. Parmar & Others vs. State of Haryana & Others** reported in (1984)3 SCC 281 to contend that the vested right cannot be taken away due to amendment of law with retrospective effect. He would also place the decision of the Hon'ble Supreme Court in **Govind Prasad vs. R.G. Prasad & Others** [(1994)1

B

Supreme Court Cases-437] wherein it was held that "An executive order of the Government cannot be made operative with retrospective effect."

8. In a similar matter in O.A.No.350/1772/2015 (Srabaní Bhattacharya vs. Union of India & Others) this Tribunal having noted its earlier decision in O.A.No.1194/2015 (Ratna Sarkar vs. UOI & Others) quashed the impugned speaking order and directed the respondents to apply the circulars dated 30.09.2004 and 11.09.2013 treating the applicant as dependent daughter if she was found eligible in terms of O.M. dated 30.08.2004.

9. Having noted the rival contentions and having delved into the relevant provisions we feel it appropriate to quash the orders dated 31.08.2017 and 10.10.2017 and dispose of this O.A. with a direction upon the respondent authorities to consider the prayer of the applicant for family pension in the light of the decision of this Tribunal in O.A.No.350/1772/2015(Srabaní Bhattacharya vs. Union of India & Others) and the decision of the Hon'ble Supreme Court in **Ex Captain A.S. Parmar & Others vs. State of Haryana & Others** reported in (1984)3 SCC 281, to continue to pay her family pension month by month and every month until she incurs a disability on account of her remarriage or upon earning more than Rs.2500/- in terms of the relevant provisions.

No order as to costs.

(Dr. Nandita Chatterjee)
Administrative Member
sb

(Bidisha Banerjee)
Judicial Member

