

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD.**

**OA No.324/2019**

**This the 27<sup>th</sup> day of August, 2021.**

**Coram : Hon'ble Shri Jayesh V.Bhairavia, Member (J)  
Hon'ble Dr. A.K.Dubey, Member (A)**

Pinky Jivatram Somai  
Daughter of late Jivatram Vasumal  
Aged 40 years,  
Residing at New 'G' Ward,  
House No.41-1, Kubernagar  
Ahmedabad – 382 340. .... Applicant

( By Advocate : Shri Joy Mathew )

VERSUS

1. Union of India  
Notice to be served through  
The Secretary  
Ministry of Defence  
South Block,  
New Delhi – 110 001.
2. Engineer in Chief  
Military Engineering Service,  
Kashmir House, Rajaji Marg,  
New Delhi 110 011.
3. The Chief Engineer  
Southern Command HQs  
Pune – 411 011.
4. Garrison Engineer (Amry)  
Camp Hanuman, Shahibaug  
Ahmedabad 380 004.
5. Principal Controller of Accounts (Pension)  
Allahabad (GP-VIII),  
Draupadi Ghat,  
Allahabad – 211 014. .... Respondents

(By Advocate : Ms. R.R.Patel)

**ORDER (ORAL)**

**Per : Hon'ble Shri J.V. Bhairavia, Member (J)**

1. In the instant OA, aggrieved by the impugned order dated 15.07.2019 (Annexure A/1), the applicant has filed the present OA, challenging the impugned decision whereby the respondents has rejected the claim of applicant for grant of family pension to her being divorced daughter.
2. Learned counsel for the applicant, Shri Joy Mathew mainly submits that the father of the applicant Late Shri Jivatram Vasumal was working as Fitter in MES. He retired on 08.12.1989 and till he expired on 04.12.1998, he received pension. After his death, the mother of the applicant Jamnaben alias Khushaliben Somai was receiving family pension being widow. She also expired on 25.7.2009 at Ahmedabad. During the life time of her mother, she was residing to her parental house due to dispute arose with her husband and both were separated since 2005-06. The husband of the applicant had filed divorce petition bearing HMP No.656/2006 before the Family Court, Ahmedabad. The applicant was opponent therein in the said divorce petition (Annexure A/2). During the pendency of said divorce petition, the mother of the applicant expired on 25.07.2009. Further, it is contended that customary divorce took place and with the mutual consent both had filed joint application for their consent divorce before the Family Court, Ahmedabad. The Family Court, Ahmedabad

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allowed the consent divorce application on 16.09.2011 in HMP No.656/2006. Thereafter, the applicant was residing with her mother since 2005-06 being dependant divorcee daughter.

3. It is contended that in the year 2017, by way of OM No.1/13/09-P&PW (E) dated 19<sup>th</sup> July, 2017 the Department of Pension & Pensioners' Welfare had decided to grant family pension to divorce daughter of the ex-employee / family pensioner and issued instructions in this regard. For the sake of the brevity, the relevant para are relied upon by the counsel for the applicant are reproduced as below : -

- "4. It was clarified that a daughter if eligible, as explained in the preceding paragraph, may be granted family pension provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents and still on the date her turn to receive family pension comes. Accordingly, divorced daughters who fulfil other conditions are eligible for family pension if a decree of divorce had been issued by the competent court during the life time of at least one of the parents.*
- 5. This department has been receiving grievances from various quarters that the divorce proceedings are a long drawn procedure which take many years before attaining finality. There are many cases in which the divorce proceedings of a daughter of a Government employee/pensioner had been instituted in the competent court during the life time of one or both of them but none of them was alive by the time the decree of divorce was granted by the competent authority.*
- 6. The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to grant family pension to a divorced daughter in such cases where 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 their death - provided the claimant fulfils 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."*

4. It is contended that since the DoPT has made divorced daughter of the family pensioner to be eligible to claim for grant of family pension,

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she has submitted application dated 30.03.2017 for grant of family pension, but the same was rejected vide the impugned order dated 15.07.2019 by the office of respondent No.5. The reason assigned by the respondent No.5 while rejecting the claim of the applicant reads as under :

*“During scrutiny of the claim, it is found that Father of the claimant expired on 04.12.1998 and family pension has been issued to Smt. Kushali Bhai (claimant mother). The mother of claimant has expired on 25.07.2009. The Claimant has got her divorce from Family Court, Ahmedabad on 25.08.2011.*

*2. Since the marital status of Claimant on 25.07.2009 (till death of her mother) is neither divorcee nor any case regarding divorce has been filed, hence, as per Ministry of Personnel, P.G. & Pensions Department of Pension & Pensioners Welfare OM No.1/13/09-P & PW (E) dated 19.07.2017 (copy enclosed) the claimant is not eligible for family pension.*

*3. Further, it has also been observed that the claimant has submitted a case before Family Court, Ahmedabad vide application No.1416/2005 on 08.06.2005 for alimony from her husband. This application can't be treated as OA for Divorce case and hence the claimant is not entitled for family pension.*

*4. In view of the above, the above referred claim is returned unactioned with remarks, if HOD agreed, may take up the matter with Law Ministry for their legal help/ opinion/ expertise in the instant case.*

*- sd-*

*Senior Accounts Officer (P)”*

5. It is stated by the applicant that the respondents have misinterpreted the guidelines/instruction contained in OM dated 30.03.2017 not only that erroneously observed that there was no divorce petition filed or pending during the life time of pensioner i.e. the mother of the applicant. In this regard, it is submitted that in fact during the life time of the pensioner i.e. mother of the applicant, the applicant herein came to her parental house due to separation with her husband and the

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divorce petition No.656/2006 filed in the year 2006 was pending before the Family Court, Ahmedabad, wherein admittedly the applicant was opponent. During the pendency of the said divorce petition, the mother of the applicant expired on 25.07.2009. It is also contended that during the pending of said divorce petition, customary divorce took place and based on it, the applicant along with her husband had filed separate Family Suit No.950/2011 for consent divorce decree before Family Court, Ahmedabad. The said Family Suit was allowed and decree for divorce of the applicant was issued by the Family Court, Ahmedabad vide order dated 25.08.2011. Thereafter, on the basis of customary divorce as well as divorce decree issued by competent Family Court vide order dated 25.08.2011 the applicant along with her husband had filed joint compromise pursis in pending HMP No.656/2006 and declared that divorce decree has been issued in their favour vide order dated 25.08.2011. Accordingly, the said pending divorce petition H.M.P. No.656/2006 was ordered to be disposed of by Family Court, Ahmedabad vide order below Exhibit-36, dated 16.09.2011. Therefore, as per the guidelines contained in para 6 of OM dated 19.07.2017, the applicant being divorce daughter is entitled for family pension. The reason assigned by the respondents in the impugned order are contrary to the guidelines contained in OM dated 19.7.2017 as also contrary to the facts of the case of the applicant.

6. On the otherhand, the respondents have filed their reply, opposed the claim of the applicant merely on the ground that the applicant has not filed divorce petition during their life time of the pensioner i.e. the mother of the applicant, who expired on 25.07.2009 and as per the OM dated 19.07.2017, the claimant is not eligible for family pension, the material status of the applicant on 25.07.2009 was neither divorcee nor any case regarding divorce was filed. Therefore, the applicant's claim was not acceded vide impugned order and the reasons stated therein are just and proper.
7. Heard the counsel for both the parties.
8. It is noticed that undisputedly during the life time of pensioner i.e. the mother of the applicant, the divorce petition i.e. HMP No.656/2006 between the husband of the applicant and applicant herein was pending before the Family Court, Ahmedabad. The mother of the applicant expired on 25.07.2009. Thereafter, as noted hereinabove, customary divorce took place and based on it, the separate petition was consent divorce decree was filed i.e. Family Suit No.950/2011 by the applicant along with her husband and the same was allowed and divorce decree was issued on 25.08.2011. Since the divorce decree was issued by the competent court, the applicant and her erstwhile husband had declared the same by way of joint pursis in pending original divorcee petition i.e. to HMP No.656/2006, accordingly the said suit was disposed of vide 16.09.2011. In view of this factual matrix, we are in agreement in the submission of the learned counsel for the applicant. Admittedly,

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during the life time of pensioner, the divorce petition pertains to the applicant was indeed pending and in terms of policy of the respondents as stipulated in OM dated 17.09.2017 more particularly, para 6 of it, made applicant entitled for grant of family pension being divorce daughter of the pensioner.

9. In view of the above, the reason assigned by the respondents for denying the claim for grant of family pension to the divorce daughter i.e. applicant herein, are in our considered opinion is contrary to the terms of OM dated 17.09.2017. The impugned decision suffers from infirmity and the same deserves to be quashed and set aside. Accordingly, the impugned order dated 15.07.2019 (Annexure A/1) is quashed and set aside. The OA stands allowed and the respondents are hereby directed to grant the family pension to the applicant in terms of OM dated 17.09.2017 being divorce daughter of the pensioner.
10. Pending MAs, if any, also stand disposed of.
11. No order as to costs.

**(A.K.Dubey)**  
**Member (A)**

**(J.V.Bhairavia)**  
**Member (J)**