

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/924/2017

Dated: 13/12/2018

Between

S. Haseena Begum,
D/o. Late S. Rasool,
Aged 49 years,
R/o. D.No.9/620, Bandimore Street,
Near No.2 Elementary School,
Gooty R.S.,
Anantapur District – 515 402, A.P.

... Applicant

AND

1. Union of India rep. by
The General Manager,
South Central Railway,
Rail Nilayam,
Secunderabad.
2. The Divisional Railway Manager,
South Central Railway,
Guntakal Division,
Guntakal.
3. The Senior Divisional Personnel Officer,
South Central Railway,
Guntakal Division,
Guntakal.

... Respondents

Counsel for the Applicant : Mr. KRKV Prasad
Counsel for the Respondents : Mr. V.V.N. Narasimham, SC for Railways

CORAM :

Hon'ble Mr. B.V. Sudhakar, Admn. Member

ORAL ORDER

(Per Hon'ble Mr. B.V. Sudhakar, Admn. Member)

The O.A. has been filed for not granting secondary family pension to the applicant by the respondents.

2. The brief facts of the case are that the applicant is the daughter of the deceased employee who served the respondent's organization. The employee passed away on 12.12.1986. Family pension was granted to the wife of the deceased employee which she drew till her death on 31.8.2010. The deceased employee had two daughters - S. Haseena Begum, who is the applicant in the O.A. and S. Mubarak Begum. The applicant S. Haseena Begum got married in the year 1982 and was divorced as per the Muslim law on 9.5.2000 vide Talak Nama dated 9.5.2000. The applicant thereafter lived with her mother who was getting family pension. In other words, the applicant was dependent on her mother who was getting family pension. On the demise of the applicant's mother, the applicant applied for secondary family pension. The respondents sought for certain documents to examine grant of family pension. In response, the applicant did submit the documents sought for. The applicant submitted the documents relating to the registration of her divorce in the records of Govt. of Andhra Pradesh based on the certificates issued by Khazi & Kateeb, Gooty in Urdu which bear the signature of the husband of the applicant and witnesses. The said certificate was produced in the Court of

Junior Civil Judge, Gooty for obtaining a decree vide O.A. No.85/2013 vide order dated 29.01.2014 along with other documents. The applicant claimed that she filed the Original Suit since the Talak Nama issued by the Khazi was not accepted by the Railways.

3. The deceased Railway employee submitted the family declaration showing the name of the applicant as daughter. However, when the applicant got married, the applicant's father did not show her name in the family declaration form while he was in service. The medical identity card issued by the Railways on 15.11.1996 has shown the name of the applicant along with other family members of the deceased employee. This identity card was issued prior to the marriage of the applicant. The wife of the deceased employee has also nominated the applicant in the Pension Account opened by her in State Bank of India, Gooty branch on 28.6.2010. The applicant made several representations and since there was no response forthcoming from the respondents, she issued a legal notice. In response, the respondents gave a reply stating that the Junior Civil Judge, Gooty issued Divorce Decree on 29.01.2014 which implies that the applicant has taken divorce after the death of her mother. Therefore, in terms of Railway Board's letter No.99/2013 dated 26.9.2013, the applicant is not dependent on her mother as on 31.8.2010 i.e. on the date of death of her mother i.e. As the respondents have not provided secondary family pension, the applicant filed the O.A.

4. The contention of the applicant is that the Junior Civil Judge, Gooty has issued the Divorce Decree on 9.5.2000. The deceased employee has also submitted documents to the respondents indicating that the applicant is his

daughter. The Talak Nama was issued as per Muslim Personal Law. However, in order to comply with the requirements of the respondents, the applicant approached the Junior Civil Judge and got the Divorce Decree which was tendered on 29.1.2014. The date of judgement cannot be construed as the date of divorce. The applicant, after being divorced, was dependent on her mother till her death on 31.8.2010. The divorce certificate issued by the concerned Khazi, the name of the applicant as nominee in the Bank Pass Book of the mother of the applicant relating to the pension account opened in SBI, the family member details given by the deceased employee prove that the applicant was a family member of the deceased employee and that she was divorced before her mother had passed away. Despite producing all the documents required, the respondents have been raising one query or the other and are not granting secondary family pension as a result of which the applicant has been put to untold hardship.

5. The respondents state that they have paid all the settlement dues to the wife of the deceased employee who expired on 12.12.1986. Further, the respondents claim that the deceased employee's wife, while submitting pension documents, has mentioned that she had no sons and had only a minor daughter, without indicating that she had one dependent divorced daughter. Even at the time of applying for revision of family pension as per VI CPC w.e.f. 01.01.2006, the deceased employee's wife did not mention about the divorced daughter residing with her. The respondents also contend that the applicant had not submitted any valid Divorce Decree issued by a competent Court or Government Khazi. The applicant also did not produce any

documents to prove that she is the daughter of the deceased employee. Therefore, on these grounds her claim for secondary family pension was rejected. The Junior Civil Judge, Gooty has issued the Divorce Decree only on 29.01.2014 which is after the death of the mother of the applicant. The respondents emphasize that the wife of the deceased employee, while seeking family pension, had only indicated that she has only one daughter. The copy of the medical identity card issued on 15.11.1976 is not related to Railways is one another contention of the respondents. The respondents further pointed out that the date of Talak Nama is mentioned as 9.5.2000 in some paragraphs of the O.A. and as 9.5.2010 in one of the paragraphs in the O.A. and thereby stated that the applicant is contradicting herself and misleading the Court.

6. Heard both the learned counsel and perused the documents submitted in detail.

7. The identity card dated 15.11.1976 issued by the Divisional Personnel Officer, Guntakal clearly shows that the applicant S. Haseena Begum is the daughter of the deceased employee. The Railway Serial Circular No.98/2013 dated 25.10.2013 clarifies that the family pension is payable to the children as they are considered to be dependent on the Govt. servant/pensioner or his/ her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Government servant or his/ her spouse, whichever is later, are eligible for family pension. The family pension to a widowed or divorced daughter is

payable provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents and on the date her turn to receive family pension comes. The said Circular has also made a pertinent observation that a widowed daughter who had no independent source of income at the time of death of her parent and on the date her turn comes she may also be granted family pension. The family pension will continue only till she re-marries or starts earning her livelihood equal to or more than the sum of minimum family pension and dearness relief thereon. The only difference in the present case is that the applicant is a divorced daughter. The said circular does state that divorced daughter should also be paid family pension. The applicant's mother died on 31.8.2010 as per the death certificate enclosed as Annex.A-3 issued by the Birth and Death Register, Gram Panchayat, Chetnepalli. The Talak Nama was issued to the applicant on 9.5.2000 by the Khazi on his letter head. The Talak Nama is in Urdu. Translation of the same was also provided in Telugu at page 7 of the rejoinder filed by the applicant. The respondents were not satisfied with the divorce certificate issued by the Khazi and, therefore, the applicant approached the Junior Civil Judge, Gooty who had given the Divorce Decree in O.S. No.85/2013 dated 29.1.2014. A reading of the said decree is as under:

“The cause of action for the suit arose on 8.11.1980 when the marriage of the plaintiff with the defendant has taken place in the house of the plaintiff at Vankagadda Veedhi, Gooty R.S. and on the dates when the plaintiff has given birth to two daughters and on the various dates, the defendant addicted to bad vices and harassed the plaintiff physically and mentally demanding for cash from the father of the plaintiff and in the year 1985 when the plaintiff was beaten and sent from the house of the defendant and on

9.5.2000 when Talak was pronounced at Gooty all at Gooty R.S., Gooty within the jurisdiction of this court.

This suit coming on this day before me for final hearing in the presence of Sri G. Sreekanth Reddy, Advocates for Plaintiff and Sri R.V. Chalapathi, Advocate for the defendant, and the defendant being called absent, set exparte, and having stood over for consideration, this court doth order and DECREE as follows:

- i) That the marriage of the plaintiff with the defendant be and the same is hereby dissolved and;*
- ii) The defendant do also pay a sum of Rs.12/- towards the costs of the suit and do bear his own costs.”*

8. It is the claim of the respondents that the applicant got divorced on 29.01.014. Such an assertion lacks logic because the learned Judge has very clearly stated in the operative portion of the judgement that the Talak Nama was taken on 9.5.2000. Therefore, the applicant was divorced on 9.5.2000 and not on 29.01.2014. Hence, by taking the date of divorce as 9.5.2000, the applicant has been pleading that after her divorce she had none else and has been staying with her mother by depending on her for her survival. The mother of the applicant passed away on 31.8.2010. Therefore, the applicant satisfies the clause of dependency on her mother as per Sl. Circular No.98/2013 which permits grant of secondary family pension to a family member. In addition, the name of the applicant being shown as nominee in the pension account opened in SBI on 28.6.2010 also confirms that the applicant is the family member of the deceased employee and the very fact that she has been nominated in the pension account gives a clue that on the death of her mother she can claim for secondary family pension. The respondents also pointed out that the applicant has indicated the date of

divorce as 9.5.2010 in para 4.5 of the O.A. whereas the Talak Nama is dated 9.5.2000. The respondents are trying to be hyper technical in the sense that in other paragraphs of the same O.A., the Talak Nama's date is mentioned as 9.5.2000. Therefore, a minor typographical error should not be exaggerated and pointed out as a mistake. Incidentally, a look at the school record issued by the Head Master, MPP Elementary School, Mammillacheruvu, Gooty Mandal annexed as Annex.20 also indicates that the applicant is a family member of the deceased employee. Thus, the applicant has produced abundant documentary evidence to show that she is the family member of the deceased employee and that she has been divorced on 9.5.2000. Having satisfied both the criteria, the applicant is obviously eligible for grant of secondary family pension.

9. The applicant has also submitted the non-remarriage certificate issued by Tahasildar. Besides, the applicant has also filed an affidavit that she has been divorced on 9.5.2000. The income certificate issued by the Revenue Department of Government of Andhra Pradesh and the family member certificate issued by the Govt. of A.P. in Annex.A-18 & A-19 once again establish that the applicant is a family member and a divorced daughter of the deceased employee. The unemployment certificate has also been submitted as issued by the Tahasildar, Gooty.

10. Learned counsel for the respondent submitted that the applicant has made a representation on 1.6.2011 saying that she is enclosing the death certificate of her parents and the divorce certificate issued by the Junior Civil Judge, Gooty for their kind perusal. The argument of the learned counsel for

the respondents is that when the order of Junior Civil Judge is dated 29.1.2014, it is not understood as to how the applicant could enclose divorce certificate dated 1.6.2011. In response, learned counsel for the applicant stated that the Railway authorities have been asking for different documents on different occasions and, therefore, it may be related to some other document submitted by the applicant. Learned counsel also took objection that this point was not raised in the reply statement and they cannot improve their case as per law. Besides, it is not understood as to how the respondents have not questioned the applicant on this immediately after receiving the representation on 1.6.2011. Thus, the respondents are giving an impression that they are trying to find one reason or the other to reject the request of the applicant.

11. Thus, as can be seen from the above, the applicant has not only submitted relevant documents but also submitted number of other documents to prove that she is a family member of the deceased employee and also got divorced on 9.5.2000. As the material facts establish that she is the divorced daughter and dependent on her mother before she passed away, the applicant has made out a case which enables the Tribunal to pass an order in her favour. Therefore, the O.A. succeeds.

12. The respondents are directed to consider:

- (i) granting secondary family pension to the applicant w.e.f. 01.09.2010 onwards along with arrears and interest as is allowed on fixed deposits by State Bank of India for a

tenure of three years and more. Any consequential benefits thereon shall also be extended to the applicant.

(ii) Time allowed to implement this order is three months from the date of receipt of this order.

(iii) No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

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