



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No. 139/2019

Reserved on: 25.08.2021

Pronounced on: 08.09.2021

(Through Video Conferencing)

Hon'ble Mr. Mohd. Jamshed, Member (A)

Anita D/o Late Smt. Raj Rani
R/o Qtr No. T-56/A
Railway Colony,
Rohtak, Haryana.

Aged-26 years
Sub: Family Pension

...Applicant

(By Advocate : Ms. Neelima Rathore for Mr. U. Srivastava)

Versus

1. Union of India,
Through the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Estate Entry Road, New Delhi.

...Respondents

(By Advocate : Mr. Satpal Singh)



ORDER

Mohd. Jamshed, Member (A):-

The applicant's father Late Sh. Sita Ram, who was an employee of Northern Railway, New Delhi passed away on 14.02.1994 while in service. The mother of the applicant was granted appointment on compassionate grounds with the respondents and worked as Parcel Porter in Northern Railway, New Delhi. It is stated that the applicant is the only daughter who got married on 10.11.2010. Subsequently, in view of the family circumstances, the applicant filed for divorce in the Court of Additional District Judge, Rohtak vide Petition No. 15/2014 on 04.07/2014. In the meanwhile, the mother of the applicant died on 11.09.2014. The decree for divorce was pronounced by the Additional District Judge on 09.01.2015 dissolving the marriage of the applicant. The applicant, thereafter, made various representations for grant of family pension in view of her divorce and having no means of livelihood and financial support for taking care of her child.



2. Aggrieved by the fact that no action was taken by the respondents for grant of family pension, the applicant filed OA No. 3473/2017. The OA was disposed of at the admission stage itself vide order dated 03.10.2017 with directions to the respondents to pass a speaking order on her representation. In compliance of the same, the respondents passed an order dated 05.12.2018 rejecting the claim of the applicant on the ground that the decree of divorce was not issued in her favour during the lifetime of the mother of the applicant and hence according to PS No. 14092/2013, the applicant is not entitled for grant of family pension. Aggrieved by this impugned order, the applicant has filed the present OA seeking directions to the respondents for quashing and setting aside the impugned order dated 05.12.2018 and to grant her the family pension in terms of OM No. 1/13/09-P&PW (E) dated 19.07.2017 issued by Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' Welfare, Government of India.

3. It is the contention of the applicant that the respondents have rejected her representation for grant of



family pension on the basis of PS No. 14092/2013 whereas the clarifications issued vide Department of Pension & Pensioners' Welfare's OM dated 19.07.2017 clearly mandates that the family pension to the divorced daughter shall be granted if the divorce proceedings are filed under the competent court during the lifetime of the employee/family pensioner even though the divorce takes place after the death of the employee/family pensioner. The applicant claims that her case is covered by this OM and denial of family pension to her is illegal and against the rules.

4. Respondents filed a counter affidavit opposing the OA and reiterating the decision in the impugned order dated 05.12.2018. It is contended that the applicant's claim for grant of family pension is not tenable in terms of the instructions contained in PS No. 14092/2013 which prescribes that dependency as well as decree of divorce should be available during the survival of the employee/family pensioner.

5. Heard Ms. Neelima Rathore for Mr. U. Srivastava, learned counsel for the applicant and Mr. Satpal Singh,



learned counsel for the respondents, through video conferencing.

6. The applicant's father Late Sh. Sita Ram died in harness while working in Northern Railway, New Delhi on 14.02.1994. On his demise, his wife Late Smt. Rajrani, the mother of the applicant was appointed on compassionate ground as Parcel Porter in the Northern Railway, New Delhi in the year 1995. She had also made a will in favour of the applicant Ms. Anita, her only daughter, which is available as Annexure (A/2) stating that the applicant is the sole heir for all her movable and immovable property and for every benefit after her death. It is also on record that the applicant got married in 2010 and in view of the subsequent family disputes, she filed petition for divorcee under Section 13-B (1) of the Hindu Marriage Act in the court of Additional District Judge, Rohtak on 04.07.2014. In the meanwhile, the mother of the applicant expired on 11.09.2014. On 09.01.2015, the decree for divorce was allowed and the applicant's marriage was dissolved. The applicant initially made representation for grant of compassionate appointment which was rejected by the



respondents. Subsequently, in view of her extreme financial condition, no means of livelihood and support, she applied for grant of family pension in her favour vide representation dated 16.07.2017. She also filed an OA No. 3473/2017. This OA was disposed of vide order dated 03.10.2017 directing the respondents to pass speaking order on her representation. Respondents vide their letter dated 05.12.2018 rejected her representation for grant of family pension mentioning that although she has filed divorce petition prior to the death of her mother, the final decree was pronounced on 09.01.2015 i.e. after the death of her mother and, therefore in terms of PS No. 14092/2013 the family pension cannot be granted to her.

7. In her subsequent representation dated 17.08.2017 addressed to the respondents, she had specifically referred to the OM dated 19.07.2017. Despite this, the respondents did not take the clarification given in the OM dated 19.07.2017 into account while passing the impugned order dated 05.12.2018. At the same time, in the counter affidavit filed by the respondents no mention has been made to this OM and the claim of the applicant based on the clarification



given therein has been opposed merely on the basis of an earlier policy. As the entire claim of the applicant is based on the OM dated 19.07.2017 issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Pension & Pensioners' Welfare, Government of India, the same is required to be examined further. The OM dated 19.07.2017 is extracted below:-

“Sub: Eligibility of divorced daughters for grant of family pension - clarification regarding.

Provision for grant of family pension to a widowed/divorced daughter beyond the age of 25 years has been made vide OM dated 30.08.2004. This provision has been included in clause (iii) of sub-rule 54 (6) of the CCS (Pension), Rules, 1972.

2. As indicated in Rule 54(8) of the CCS (Pension) Rules, 1972, the turn of unmarried children below 25 years of age comes after the death or remarriage of their mother/father, i.e., the pensioner and his/her spouse. Thereafter, the family pension is payable to the disabled children for life and then to the unmarried/widowed/divorced daughters above the age of 25 years.

3. It was clarified, vide this department Office Memorandum of even number, dated 11th September, 2013, that the family pension is payable to the children as they are considered to be dependent on the Government 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, only 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. If two or more children are eligible for family pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes.



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.

7. This issues with the concurrence of Ministry of Finance, Department of Expenditure, vide their ID No. 1(1)/EV/2017, dated 7th July, 2017. ”

8. The above mentioned OM specifically mentions the earlier instructions issued in OM dated 11.09.2013, according to which the divorced daughter, who fulfils other condition were eligible for family pension only if the decree of divorce is issued by the competent court during the lifetime of at least one of the parents. It is also stated that large number of representations and grievances were



received from the applicants in view of long drawn divorce proceedings, which sometimes do not attain finality even after many years and the applicants in those cases, who have initiated divorce proceedings prior to the death of the parents become ineligible in view of long drawn proceedings for such grant of family pension. Considering these grievances, the Department of Personnel and Training in consultation with Department of Expenditure decided that family pension to divorced daughter in such cases where the divorce proceedings were filed in competent court during the lifetime of the employee/pensioner or his/her spouse but divorce took place after the death of the parents and provided that the claimants therein fulfils all the other condition for grant of family pension will be eligible for grant of family pension from the date of divorce. The subject of this OM is *'Eligibility of the divorced daughters for grant of family pension-clarification regarding'*. This clarificatory OM was adopted by the Railway Board vide RBE No. 102/2017 dated 23.08.2017. It reads as under:-

“Subject: Eligibility of divorced daughters for grant of family pension –clarification regarding.

A copy of Department of Pension and Pensioners' Welfare (DOP&PW)'s O.M. No. 1/13/09-P&PW(E) dated 19th July, 2017 on the above cited subject is enclosed for information and



compliance. These instructions shall apply mutatis mutandis on Railways also. Rule 54 of the CCS (Pension) rules, 1972 mentioned in DOP&PW's O.M. corresponds to Rule 75 of the Railway Services (Pension) Rules, 1993.

2. The Railway Board's instructions corresponding to the DOP&PW's instructions referred to in their aforesaid O.M. Dated 19th July, 2017 (enclosed) are given under:-

S. No.	DOP&PW's Instructions	Railway Board's Corresponding Instructions
1.	O.M. No. 1/19/03-P&PW (E) dated 25/30.08.2004.	Letter No. F(E)III/98/PN1/4 dated 16.03.2005
2.	O.M. No. 1/13/09-P&PW (E) dated 11.09.2013	Letter No. F(E) III/2007/PN1/5 dated 26.09.2013

”

9. The same was further implemented by the respondents vide their letter dated 08.09.2017. It is thus evident from the records available in this OA including the will of the applicant's mother and the proceedings in the Court of Additonal District Judge, Rohtak that the applicant is the daughter of Late Sh. Sita Ram and Late Smt. Rajrani and her case is fully covered by the clarification issued by the OM dated 19.07.2017 which is also adopted by the Ministry of Railway, Railway Board. Considering the applicant's case under the previous instructions i.e. PS No. 14092/2013 and rejecting the same is against the extant rules and laid down guidelines. The clarification issued vide OM dated 19.07.2017 by the Government and adopted by the Ministry of Railway is to be considered in all such cases



being clarificatory. The case of the applicant cannot be rejected on the ground that whether the same is retrospective or prospective. The OM dated 19.07.2017 is the clarification to the OM dated 11.09.2013 and, therefore squarely applicable to the case of the applicant.

10. In view of the above mentioned, the applicant's claim for family pension is fully justified. Accordingly, the OA is allowed and the impugned order dated 05.12.2018 is quashed and set aside. The applicant is entitled for grant of family pension and the same should be granted to her with effect from the date of her Divorce within three months from the date of receipt of a copy of this order. Arrears shall also be paid within three months. Pending MAs, if any, shall stand disposed of. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

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