

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR****OA NO. 291/00087/2015****Order reserved on: 15/11/2016****Order pronounced on: 02/12/2016****CORAM:****Hon'ble Ms. Meenakshi Hooja, Administrative Member**

Bundo D/o Late Shri Bashir Khan, by caste Muslim, aged about 55 years, resident of Shivpuri, Block-A, Chamanpura, Udaei Mod, Gangapur City, District Sawaimadhopur, Rajasthan.

....Applicant

(By advocate : Mr. Jai Kishan Yogi)

VERSUS

1. Union of India through Financial Advisor and Chief Accounts Officer (Pension), West Central Railway, Jabalpur, M.P.
2. Divisional Railway Manager, West Central Railway, Kota, Rajasthan.
3. Senior Divisional Finance Manager, West Central Railway, Kota, Rajasthan.
4. Manager, State Bank of Bikaner and Jaipur, Main Branch Sawaimadhopur, District Sawaimadhopur, Rajasthan.

....Respondents

(By advocate: Mr. Anupam Agarwal)

ORDER

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act 1985 being aggrieved with the order dated 23/12/2014 passed by the respondent No. 2 by which the applicant has been denied family pension thereby seeking the following reliefs:

- (i) That the impugned order dated 23/12/2014 (Annexure-A/1) may kindly be declared as null and void and be declared as illegal and further may be quashed and set aside.
- (ii) That by an appropriate order or direction the respondents may be directed to make the payment of arrears of Family Pension which was sanctioned from 15/11/2011 and further to make the payment of family pension to the applicant regularly.
- (iii) That any other beneficial orders or directions which this Tribunal deems just and proper in the fact and circumstances of the case be kindly passed in favour of the applicant.

2. When the matter came up for consideration and hearing on 25/10/2016 and further continued on 15/11/2016, learned counsel for the applicant submitted that the father of the applicant retired from service of the respondents on 31/08/1981. The applicant who was married earlier, got divorced on 28/04/1988 as may be seen from Talaqnama at Annexure-A/2. In view of the divorce, the applicant started living with her parents and was dependent on them. Thereafter father of the applicant died on 05/09/1995 and mother of the applicant began getting family pension after his death. Her mother also died on 10/01/2001. As the applicant was living with her mother and had no source of income after her death, she applied for family pension and the same was sanctioned vide Annexure-A/5 dated 08/07/2014 w.e.f. 15/11/2011. However, it was soon cancelled by letter dated 23/12/2014

(Annexure-A/1) on the ground that the divorce decree is dated 14/11/2011 which is after the death of both her parents and she is not eligible and entitled for family pension and as per Railway RBE No. 109/2014.

3. Learned counsel for the applicant in this regard submitted that as may be seen from the Talaqnama (Annexure-A/2) and Divorce decree dated 14/11/2011 (Annexure-A/3) actually the divorce of the applicant took place on 28/04/1988 as per religious customs and as the applicant was already divorced, prior to death of both her father (in 1995) and mother (in 2001) and was completely dependent on them, she is therefore entitled to continuation of family pension and it cannot be said that she was not divorced in 1988. He also submitted that it is very clear from the divorce decree dated 08/10/2015 filed with the rejoinder that the applicant's divorce actually took place on 28th April in the year 1988, and as she was a divorced daughter at the time her father and mother were alive, her family pension cannot be cancelled. Therefore, learned counsel for the applicant prayed for the OA to be allowed.

4. Per contra, learned counsel for the respondents submitted that the order of the civil court dated 14/11/2011 (Annexure-A/3) states that the marriage of the applicant is dissolved and

divorce decree passed but there is nothing in the order to show that the divorce has been decreed from 1988 and therefore the divorce is to be treated as effective from the date of the Decree. He further submitted that the new decree dated 08/10/2015 (Annexure-A/7 filed with the rejoinder) seems to have been obtained by the applicant, without any reference to earlier decree, from the same court and it cannot therefore be relied upon. As it has not been established by the applicant that she was actually divorced from her husband in the year 1988 and was dependent on her father thereafter, and later on her mother after the death of her father, therefore the cancellation of family pension in terms of RBE 109/2014 dated 30/09/2014 read with DOP&PW OM dated 18/09/2014 (Annexure-R/1) is in order and the order Annexure-A/1 is valid and legal and there are no grounds to set it aside and prayed for the dismissal of the OA.

5. Counsel for the applicant in rebuttal submitted that when case for obtaining a divorce decree was filed in 2015 (Annexure-A/7) reference had been made of the earlier decree, while filing the case but somehow it does not find mention in the order and as it clearly states that the divorce took place on 28/04/1988, there is no ground for the respondents to deny her the family pension.

6. Considered the aforesaid contentions and perused the record. The basic issue in this OA is whether the applicant can be treated as divorced from 28/04/1988 as claimed by her i.e. prior to the death of her father in 1995 and mother in 2001 and therefore entitled for continuation of family pension in terms of DOP&PW OM No. 1/13/09-P&PW(E) dated 18/09/2014 which has been applied mutatis mutandis on the Railways vide RBE 109/2014 dated 31/09/2014 (both circulars filed as Annexure-R/1).

7. In this regard, the divorce decree dated 14/11/2011 (Annexure-A/3) issued by the Civil court Gangapurcity was seen. A perusal of the same shows that the case (registered as case No. 71/2009) was filed by the applicant for divorce under section 2 of the Dissolution of Muslim Marriage Act and interalia the applicant had submitted that her husband Mr. Babu Khan had married her about 33 years ago but turned her out of house when their daughter was just four years and that she is living in Gangapurcity with her daughter and maintaining herself by earning through labour and further that her husband is not giving any living expenses nor has he given her any legal and valid divorce. In the operative part of the order, the court has also opined that applicant had not been given any valid legal divorce by her husband and therefore the marriage has been dissolved and this divorce decree has been passed on 14/11/2011. Therefore by her own admission it appears that when the case was filed in the civil court Gangapurcity in 2009

and registered as 71/2009, the applicant herself was saying that she has not been given any valid or legal divorce.


8. It is further seen that though the applicant was sanctioned family pension vide order dated 08/07/2014 on the basis of her application Annexure-A/5, but soon after vide Annexure-A/1 23/12/2014, the same was cancelled keeping in view DOP&PW OM dated 18/09/2014 (Annexure-A/6) which has also been filed with Annexure-R/1 in which vide RBE 109/2014 dated 30/09/2014 the aforesaid DOP&PW OM has been made applicable mutatis mutandis to the Railways. As the decree of divorce of the applicant is of 14/11/2011 (Annexure-A/3), which is after the death of her father in 1995 and mother in 2001, she apparently does not become eligible or entitled for family pension.

9. However it is noted that along with the rejoinder, counsel for the applicant has also filed another divorce decree dated 08/10/2015 (Annexure-A/7) passed by the same Civil court, Gangapurcity which has been passed on the basis of divorce/Talaq of 28/04/1988. In this regard it is also noted and as also brought out by the counsel for the respondents, that this order of the court does not refer to the earlier order of the same court dated 14/11/2011 in case No. 71/2009 which was also regarding the same issue of divorce of the applicant and on the same matter another decree has been obtained which cannot be relied upon as it does not refer to the earlier decision on the same matter. During the course of arguments counsel for the applicant submitted that while filing case he had referred to the earlier decree but neither his application/petition

is on record nor there is any reference of the earlier case in the order of the Civil Court and therefore it cannot be relied upon.

10. It is also seen that applicant has taken contrary stands while filing the cases before the Civil Court, because in the year 2009 in case No. 71/2009 her stand was that she had not been given legal and valid divorce but in the subsequent case No. 02/2015, she has submitted she has been given divorced in 1988 itself. In view of the very obvious contradiction and the fact that the first divorce decree was given on 14/11/2011 taking into account that she has not been given any legal or valid divorce therefore it cannot be construed that the applicant stood divorced in the year 1988 i.e. well before the death of her father and mother.

11. In view of the above position and analysis the applicant has failed to make out a convincing case that she is entitled to family pension and there appears no ground to set aside Annexure-A/1 dated 23/12/2014. Accordingly as the OA lacks merit, it is dismissed with no orders as to costs.


(Meenakshi Hooja)
Administrative Member