

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1109/2017

New Delhi this the 9th day of May, 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Smt. Manju Devi,
Age 37 years,
D/o Late Shri Surender Singh, Ex (AMI),
PPO-2391/SZ, House No. 259D/2,
Mehrauli, New Delhi-110030.

-Applicant

(By Advocate: Shri Sachin Chauhan)

Versus

1. South Delhi Municipal Corporation
Through its Commissioner,
South Delhi Municipal Corporation,
Dr. S.P. Mukherjee Civic Centre,
9th Floor, J.L. Nehru Marg,
New Delhi-110 002.
2. The Dy. Controller of Account.
South Delhi Municipal Corporation,
South Zone, Green Park,
Delhi.
3. The Accounts Officer,
O/o Dy. Controller of Accounts,
South Delhi Municipal Corporation,
South Zone, Green Park,
Delhi.
4. The Director (Local Bodies)
Govt. of NCT of Delhi,
Delhi Secretariat,
I.P. Estate, New Delhi.

-Respondents

(By Advocate: Shri R.K. Jain)

ORDER (Oral)

The applicant's father late Shri Surender Singh retired from the post of Assistant Malaria Inspector (AMI), Municipal Corporation of Delhi (MCD) on 31.03.2011. He died on 13.07.2011. Prior to his retirement, he had declared the applicant to be his nominee for receiving the pensionary benefits.

2. The applicant has had strained relationship with her husband. The Dy. Commissioner of Delhi Police, Crime against Women Cell, brokered an agreement between the applicant and her husband on 18.03.2010. The terms of the agreement read as under:-

"This compromise is being done on 18.03.2010 verified at New Delhi between First Party- Harish Kumar S/o Sh. Jagpal Singh, Age-23 years; R/o-212, Pragati Vihar, Khoda Colony, Ghaziabad and Second Party i.e. Smt. Manju W/o Sh. Harish Kumar D/o Sh. Surender Singh, Age-20 years R/o House No. 259/D/2 Dhiya Chowk, Mehraul.

That the both parties with the consent of their relatives, well-wishers made a compromise that all the articles which was given to first party at the time of marriage on 18.02.2006 will remained with the first party and in lieu of that an amount of Rs. 3.50 lakh will be given to second party. The jewellery which was received by First Party has already been returned to Second Party and now they are left with no claims of any kind whatsoever against each other.

That no child was born out of this wedlock.

That both the parties are agreed that no party will interfere to each other life in future and want to live separately and further they will not file any suit/case before any court of law in future.

If any party has filed any case/suit before any court of law in that circumstance the respective party will withdraw the case from the respective court".

3. After the death of her father, the applicant laid claim for family pension. In that connection, she submitted an affidavit (Annexure A-6) as well as Annexure A-7 agreement paper. The South Delhi Municipal Corporation (SDMC) (Respondent-organization) on the basis of these documents granted her family pension w.e.f. 14.07.2011. The applicant continued to get the family pension.

4. The applicant was paid family pension w.e.f. 14.07.2011 to 31.12.2014. The SDMC vide impugned Annexure A-1 communication dated 28.09.2016, addressed to the applicant, informing her that she was not entitled for the family pension from 14.07.2011 to 31.12.2014 since she got formally divorced from her husband on 05.03.2016 in terms of the divorce decree issued by the family Court Saket. Accordingly, the SDMC has held that the amount of Rs. 4,95,954/- paid to the applicant towards family pension from 14.07.2011 to 31.12.2014 was a mistake and the applicant has been ordered to refund the said amount vide the impugned Annexure A-1 communication.

5. Aggrieved by the impugned Annexure A-1 communication, the applicant has filed the present OA praying for the following reliefs:-

“8.1 To quash & set-aside the order dated 28.09.2016 and 28.12.2016 and to further direct the respondents that no recovery in terms of aforesaid order could be made from the applicant.

- 8.2 To further direct the respondents to grant the family pension to the applicant w.e.f. 1.1.2015 (or from 5.3.2016 i.e. date of dissolution of marriage decree being passed) with all consequential benefits including arrears of family pension with 10% interest from the date of eligibility of family pension to the date of actual payment”.

6. Pursuant to the notice issued, the respondents entered appearance and filed reply. The applicant has filed rejoinder thereto.

7. Arguments of the learned counsel for the parties have been heard.

8. Shri Sachin Chauhan, learned counsel for the applicant submitted that the Annexure A-6 affidavit dated 04.08.2011 and Annexure A-7, agreement paper dated 18.03.2010 would indicate that the applicant has been residing separately from her husband at least w.e.f. 18.03.2010. A conjoint reading of the two would indicate that the applicant had not got formal divorce as on 18.03.2010. The formal divorce, however, came on 05.03.2016 by virtue of the divorce decree issued by the family Court Saket. He, thus, argued that applicant has not indulged in any misrepresentation and, therefore, the impugned Annexure A-1 communication, seeking refund of the family pension paid from 14.07.2011 to 31.12.2014, is not in order.

9. Learned counsel for the applicant placed reliance on the DoP&T OM dated 02.03.2016 (Annexure A-17), which is based on the judgment of the Hon'ble Supreme Court in the case of **State of Punjab & Ors. vs. Rafiq Masih (White Washer) etc.** He particularly drew my attention to Para 4 (i) & (v) of the OM, which are extracted below:-

- “(i) Recovery from employees belonging to Class-III and Class-IV service (or Group ‘C’ and Group ‘D’ service).
- (v) In any other cases, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would for outweigh the equitable balance of the employer's right to recover”.

10. Concluding his arguments, Shri Sachin Chauhan, prayed for a direction to the respondents for continuing the family pension of the applicant w.e.f. 14.07.2011 and for a further direction to the respondents not to recover any amount towards the family pension paid prior to the date of her formal divorce on 05.03.2016.

11. *Per contra*, Shri R.K. Jain, learned counsel for the respondents stated that the applicant has made a false declaration in her Annexure A-6 affidavit dated 04.08.2011 that she is a divorcee. In fact, her divorce was formalized only on 05.03.2016. He, thus, contended that the recovery ordered vide impugned Annexure A-1

order is perfectly in order and the applicant is not entitled for the reliefs prayed for.

12. I have considered the arguments of the learned counsel for the parties and also perused the pleadings on record. It is not in dispute that the applicant was having strained relationship with her husband and has been staying away from him. The agreement paper (Annexure A-7) brokered by Dy. Commissioner of Police, Crime against Women Cell dated 18.03.2010 is a testimony to it. It is also not in dispute that her father had declared her to be his nominee for receiving his pensionary benefits. It is quite likely that such a declaration has been made by her late father taking into consideration her marital discord with her husband. In the Annexure A-6 affidavit of the applicant, the applicant has stated that she is a divorcee for claiming the family pension. Along with the affidavit, she had also enclosed the Annexure A-7 agreement paper. It is apparent that she had no *mens rea*. On a conjoint reading of the two documents, one would have come to a conclusion that the applicant had not got formal divorce from her husband at the time of submitting application for family pension. As such, the applicant has not indulged in any act of misrepresentation and, thus, she is entitled for receiving the benefits in terms of DoP&T OM dated 02.03.2016 (Annexure A-17). Even from the humanitarian consideration in view of the fact that she is now a divorcee and had

strained marital relationship with her husband for a long time, it would be in the interest of justice and equity to grant her the reliefs claimed.

13. In the conspectus, this OA is allowed. The impugned Annexures A-1 communication dated 28.09.2016 & A-2 order dated 28.12.2016 are hereby quashed and set aside. The respondents are directed to restore the family pension of the applicant. It is further directed that the applicant shall be entitled for receiving the arrears of the family pension w.e.f. 01.01.2015. This shall be done within a period of two months from the date of receipt of a copy of this order. It is made clear that the applicant shall not be entitled for any interest on the arrears of family pension.

14. No order as to costs.

(K.N. Shrivastava)
Member (A)

cc.