

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.2843/2016

Order reserved on 2nd May 2018

Order pronounced on 8th May 2018

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

Smt. Mamta Devi (Aged about 44 years)
Divorced
Daughter of Late Shri Bhim Sen
Helper Khalasi (Electric Power)
Under Assets. Divisional Electrical
Engineer, TRD/TDL

Resident of:
Village Nagla Kumharan
PO Mohamamdabad
TDL/Firozabad, UP – 283204

Present Address:
C/o Shri O P Gautam
E 401/7, West Vinod Nagar, Delhi – 72

..Applicant

(Mr. S S Tiwari and Mr. P K Ghosh, Advocates)

Versus

1. Union of India through Secretary
Railway Board, Rail Bhawan, New Delhi
2. The General Manager
North Central Railway, Allahabad
3. The Divisional Railway Manager
North Central Railway
Nawal Yusuf Road, Allahabad
4. The Divisional Personnel Officer
North Central Railway
Nawal Yusuf Road, Allahabad
5. The Senior Divisional Finance Manager
North Central Railway
Nawal Yusuf Road, Allahabad

..Respondents

(Mr. Shailendra Tiwary)

O R D E R

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“8.1 Allow the OA and quash the impugned order / Letter No.47/Pension/UKS/2016-17 dated 06.05.2016 issued by Senior Divisional Finance Manager, NC Railways Allahabad.

8.2 Consequently, direct the respondents to release the family pension immediately to protect the family from starvation.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 Applicant's father was appointed as a Gangman on 15.08.1978. He died in harness on 28.11.2005 leaving behind his three children, Shri Dinesh Kumar, Shri Ashok Kumar (sons) and Smt. Mamta Devi (daughter).

2.2 Smt. Ram Beti, wife of Shri Bhim Sen, had predeceased him on 14.05.1998. Smt. Mamta Devi (daughter), who is applicant in this case, was married to Shri Shiv Kumar in the year 1990. From their marriage, a daughter was born. Apparently, the marriage ran into severe problem.

2.3 The applicant filed a criminal complaint against her husband and in-laws under Section 498A IPC (Annexure A-5) in the Court of Additional Chief Judicial Magistrate, Firozabad. She also claimed maintenance for herself and her daughter under Section 125 Cr. PC (Annexure A-6). The applicant claims that her late father was pursuing her cases of harassment for dowry and maintenance since the years 1992 & 1993 respectively.

2.4 The applicant has contended that she filed a divorce suit against her husband, which was decreed by the Court of Civil Judge (Sr. Division) Firozabad vide order dated 15.01.2008 (Annexure A-7). The applicant claims that after her relationship with her husband severed, she started living with her father and pursuing her cases of harassment for dowry, maintenance and divorce.

2.5 The applicant contended that after her father died on 28.11.2005, a succession certificate was issued (Annexure A-8) clearly indicating therein that she and her brothers, Dinesh Kumar and Ashok Kumar are the successors-in-title to her father.

2.6 The applicant was sanctioned family pension after the death of her father vide Annexure A-9 order dated 13.06.2008. Her grievance is that abruptly, vide impugned Annexure A-1 order dated 06.05.2016, her family pension has been stopped by the respondents, in terms of Department of Personnel & Training (DoPT) O.M. dated 11.09.2013 (Annexure A-10).

Aggrieved by this, the applicant has filed the present O.A. praying for the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply, to which a rejoinder was also filed by the applicant.

4. On completion of pleadings, the case was taken up for hearing the arguments of learned counsel for the parties on 02.05.2018.

5. Mr. S S Tiwary, learned counsel for applicant, tracing the history of the case in brief, submitted that no order can be given retrospective effect without issuing a show cause notice to the party, who is going to be adversely affected, as has been held by the Hon'ble Supreme Court in the following cases:-

i) **Income Tax Officer, Alleppey v. M.C. Ponnose & others**, 1970 AIR 385, wherein it has been held as under:-

“It may next be considered whether by saying that the new definition of "Tax Recovery Officer" substituted by s. 4 of the Finance Act, 1963 "shall be and shall be deemed always to have been substituted" it could be said that by necessary implication or intendment the State Government had been authorised to invest the officers mentioned in the notification with the powers of a Tax Recovery Officer with retrospective effect. The only effect of the substitution made by the Finance Act was to make the new definition a part of the Act from the date it was enacted....”

ii) **Union of India v. Tushar Ranjan Mohanty**, (1994) 5 SCC 450, wherein it has held as under:-

“14. The legislatures and the competent authority under Article 309 of the Constitution of India have the power to make laws with retrospective effect. This power, however, cannot be used to justify the arbitrary, illegal or unconstitutional acts of the Executive. When a person is deprived of an accrued right vested in him under a statute or under the Constitution and he successfully challenges the same in the court of law, the legislature cannot render the said right and the relief obtained nugatory by enacting retrospective legislation.”

He thus prayed for allowing the O.A. and granting the reliefs prayed for in the O.A.

6. *Per contra*, Mr. Shailendra Tiwary, learned counsel for respondents submitted that the applicant was not a divorced daughter of late Mr. Bheem

Sen at the time of his death, and hence, in terms of DoPT O.M. dated 11.09.2013, she was not entitled for grant of family pension. The learned counsel submitted that erroneously the applicant was sanctioned family pension vide Annexure A-9 order dated 13.06.2008, which has now been withdrawn in terms of *ibid* DoPT O.M.

7. I have considered the arguments of learned counsel for the parties and perused the pleadings.

8. It is not in dispute that the applicant was having strained relationship with her husband during the life time of her father. Filing of three suits for (a) harassment for dowry, (b) maintenance; and (c) divorce are testimony to it. This would reinforce the applicant's contention that she had been residing with her father at least since filing of the suits. She was sanctioned family pension on 13.06.2008, after the death of her father in harness on 28.11.2005, and has been getting the same throughout. The DoPT O.M. dated 11.09.2013 came to be issued after almost 5 years of sanction of family pension to the applicant and the respondent – Railway Department has acted on it 3 years later, i.e., 06.05.2016 by issuing Annexure A-1 order. The action of the respondents in cancelling the family pension of the applicant is unilateral and totally against the principles of natural justice as no show cause notice has been issued to the applicant.

9. As noticed hereinabove, the applicant has been getting the family pension in terms of the extant orders and the rules existing at that time. Such benefits cannot be taken away by retrospectively amending the instructions/guidelines/rules. Hence, in terms of the judgments of Hon'ble

Apex Court in **M.C. Ponnoose** and **Tushar Ranjan Mohanty** (supra), the impugned Annexure A-1 order is palpably illegal and deserves to be quashed and set aside.

10. In the conspectus of the discussions in the foregoing paragraphs, the O.A. is allowed. Impugned Annexure A-1 order dated 06.05.2016 is quashed and set aside. The respondents are directed to restore the payment of family pension to the applicant. She is entitled for arrears of the family pension for the period when she was not paid in terms of the Annexure A-1 order. It is, however, made clear that the applicant shall not be entitled for any interest on the arrears of family pension.

There shall be no order as to costs.

(K.N. Shrivastava)
Member (A)

May 8, 2018
/sunil/