

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Thursday 14th day of June Two Thousand And Eighteen

PRESENT:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A./310/464/2017

S. Vijayalakshmi,
Old No.17, New No.24,
South Vellalar Street,
Manamadurai- 630 606.Applicant

(By Advocate : M/s. R. Pandian)

VS.

1. Union of India Rep. by
The General Manager,
Southern Railway,
Park Town,
Chennai-600 003;

2. The Divisional Personnel Officer,
Southern Railway,
Madurai Division,
Madurai- 625 010.Respondents

(By Advocate: Mr. Y. Prakash)

ORAL ORDER

(Pronounced by Hon'ble Mr. R. Ramanujam, Member (A))

Heard both sides. The O.A has been filed by the applicant seeking the following reliefs:-

"to call for the records relating to the issuance of the impugned order No. U/P.500/VII/184 dated 18.11.2016/07.12.2016 rejecting the claim of the applicant, a divorced daughter, for sanction of Family Pension, to quash the impugned order and to direct the respondents to sanction Family Pension to the applicant from the date after the date of death of the applicant's father (Pensioner) i.e. from 24.08.2013."

2. It is submitted that the applicant is a divorced daughter of one M. Sivanandam, retired Sr. GLC/MNM who died on 23.08.2013. The applicant's father while alive, had sought to include the applicant's name in his family particulars for the purpose of entitling the applicant to family pension when the contingency arose. However, the representation of the applicant's father dated 4.2.2005 was rejected by the authorities by Annexure A/7 letter dated 27.05.2005 stating that the applicant had by then crossed the age of 25 years. It was also stated that the divorce itself had only taken place at the age of 43 years (as on the date of divorce i.e. 09.01.1997). Therefore, she was not eligible to be included in the PPO for the purpose of family pension.

3. It is further submitted that the Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare had, by Annexure R1 O.M. dated 30.08.2004 amended the relevant rules to remove the age restriction in the case of divorced/widowed daughters and, as such, a divorced/widowed daughter was entitled to family pension regardless of her age. When the applicant's father further took up the matter through a representation dated 14.12.2006, the same was disposed of by Annexure-A/9 order dated 6.3.2007 stating that in terms of Railway Board's letter dated 13.10.2006, a divorced/widowed daughter could only apply from the date on which her turn for family pension materialised provided she was not married/employed.

4. Learned counsel for the applicant would accordingly contend that the validity or otherwise of the divorce of the applicant was never in dispute. However, when the applicant in terms of the Annexure-A/9 communication sought family pension after the death of her father, she was directed by an order dated 08.05.2014 (Annexure-A/19) to submit an order from a court of law for legal divorce and that her case would be further examined after receipt of the same. Following this communication, the applicant formally filed for divorce and obtained Annexure-A/20 order in HMOP 80/2014 from the Family Court which decreed the divorce of the marriage that took place between the applicant and applicant's husband on 19.08.1996.

When the said order was produced before the authorities, the authorities passed the impugned Annexure A/22 order dated 18.11.2016/07.12.2016 stating that the applicant was divorced legally only on 24.06.2016 and as she had become a divorcee after the parents' death, she was not entitled to the grant of family pension in terms of the relevant rules/instructions. Aggrieved by the communication, the applicant is before the Tribunal.

5. Learned counsel for the applicant would argue that the applicant had become entitled to family pension after the amendment to rules issued by Annexure R1 Office Memorandum, Department of Pension and Pensioners Welfare dated 30.08.2004. In such circumstances, the respondents ought not to have passed Annexure A7 order dated 27.05.2005 to the effect that the applicant was not entitled to be included in the PPO for the purpose of family pension on the ground that she had crossed the age limit. Had the authorities directed the applicant's father to produce a document of divorce from a competent court of law at that time, it would have been possible for the applicant to move the Court then and obtain the decree before her father's demise. However, at Annexure-A/7, the authorities clearly indicated 09.1.1997 as the date of divorce and had not raised any dispute about the validity of the customary divorce obtained by the applicant. Even in the subsequent Annexure-A/9 communication dated 06.03.2007, they had disposed of the representation of the

applicant's father stating that the case for family pension for a divorced/widowed daughter would only arise from the date on which her turn for family pension materialised, provided she was not remarried or employed.

6. It is submitted that the respondents could not be irresponsible in handling the genuine request of the applicant's father and delay the matter till beyond his death and then direct the applicant to produce a legal divorce, when no such direction/advice was given to her father previously. And in compliance, when such a decree was obtained subsequently, it could not be rejected on the very same ground that it was only effective from a date after the death of the applicant's father and, therefore, she was not entitled to family pension. The stand of the respondents is unsustainable in law and, accordingly, the respondents are liable to be directed to accept the date of divorce as 09.01.1997 as the effective date, it is contended.

7. Learned counsel for the respondents would, however, submit that in Annexure A/7 communication, the respondents had not gone into the issue of validity of the divorce claimed by the applicant's father as at that time the applicant had already crossed the age of 43 as on the alleged date of divorce. Since the applicant was not eligible for family pension in any case, it was not considered necessary to examine the legal validity of the divorce itself. Later, when the second representation was made, again the respondents appeared to

have routinely replied to the applicant's father stating that the question of family pension would only arise from the date on which the applicant's daughter's turn for family pension materialised provided she was not remarried or employed. As such, there is no evidence of the authorities having accepted the date of divorce as claimed by the applicant. When the applicant's turn for family pension arrived, it was legitimate for the authorities to seek the requisite documents. On receiving the order of divorce from the competent court, it was noticed that no previous date was mentioned therein w.e.f. which the divorce would be effective and, therefore, the respondents were justified in rejecting her request for family pension.

8. I have considered the submissions made by the rival counsel and perused the relevant material. It is not in dispute that the applicant's father had sought inclusion of the applicant's name in the family particulars not once, but twice when he was alive. It is also not in dispute that inspite of the amendments to rules withdrawing the age restriction for the purpose of entitlement to family pension with effect from 25.08.2004, the authorities sent Annexure-A/7 communication dated 27.5.2005 stating that the applicant was not eligible for family pension because she had crossed the age of 25 years as on the date of divorce i.e. 09.01.1997. Such communication was not only not in accordance with the amended rules but misleading inasmuch as it referred to the date of divorce as

09.01.1997. Even in Annexure A/9 communication dated 06.03.2007, the respondents failed to direct the applicant's father to submit a valid legal document in support of his claim for inclusion of the applicant's name in the family particulars. On the other hand, he was informed that the applicant's case would be considered from the date on which her turn for family pension materialised which in this case turned out to be 23.8.2013, the date of death of the employee. Sadly, when her turn arrived, the applicant was directed to produce a document which she was not in possession of as such requirement was not communicated to the applicant's father when he was alive.

9. In the aforesaid circumstances, I am of the view that the applicant could not be denied family pension for the negligence and failure of the respondents to advise her father correctly whenever he sought to include her name. On the other hand, misleading communications were issued that conveyed the impression that the factum of the date of divorce itself was not in dispute and the matter would be considered when the applicant's turn arrived. I, therefore, find no merit in the respondent's contention that the applicant should be deemed to have obtained legal divorce only from the date of the order of the court which inevitably was a date after the date of death of the father of the applicant. Respondents are accordingly directed to process the case of the applicant for family pension and pass a

reasoned and speaking order on her eligibility otherwise within a period of four weeks from the date of receipt of copy of this order.

10. O.A. is allowed in the above terms. No costs.

(R. RAMANUJAM)
MEMBER(A)

asvs.

14.06.2018