

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00342/2016

Pronounced on : 01.10.2018
(Reserved on : 19.09.2018)

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CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)

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Smt. Kiran D/o Late Shri Hari Singh Rathore, aged 45 years, R/o Plot No.13, Sher Vilas Colony, Mahendra Dairy, Near Officer Mess, Gali No.2, Jodhpur

...APPLICANT

BY ADVOCATE : Mr. K.K. Shah.

VERSUS

1. Union of India, through the Secretary, Ministry of Defence, Govt. of India, New Delhi.
2. The Chief of the Air Staff, Air HQs, Vayu Bhawan, New Delhi.
3. AOC-in-C, HQ, South Western Air Command, Pin-936176, C/o 56 APO.
4. Air Officer Commanding, 32 Wing, Air Force, C/o 56 APO.
5. Principal Controller of Defence Accounts (Pension), Draupdi Ghat, Allahabad (UP).

RESPONDENTS

BY ADVOCATE: Mr. K.S. Yadav, for R1 to R5.

ORDER

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HON'BLE SMT. HINA P. SHAH, MEMBER (J):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunal's Act, 1985, wherein the applicant is seeking a direction from this Tribunal that the impugned order dated 03.12.2015 (Annexure A1) may kindly be quashed and set aside. It is further prayed that the applicant may also be held entitled for family pension as she is a divorced daughter from the date of the death of mother i.e. 09.02.2011.

2. The brief facts of the case as stated by the applicant are that the father of the applicant was serving as Water Carrier with the respondent Department and superannuated on 29.02.1992. He had nominated his wife Smt. Gita Devi to receive family pension. The father of the applicant expired on 29.11.2010 and unfortunately the mother of the applicant who was receiving family pension also expired on 09.02.2011. After death of the mother of the applicant, her brother approached the respondents for grant of family pension to the applicant as she was a divorcee and was dependent on her parents since four years prior to the grant of divorce by the Community under the customary provision on 13.08.1991. The applicant further states that in the Community to which she belongs, there is has a custom of obtaining mutual divorce in the form of Talaknama. The brother of the applicant made an application for grant of family pension to the applicant as divorcee daughter on 24.02.2011. In response to the said application, respondent no.4 asked the brother of the applicant to submit further details as per the communication dated 18.03.2011. In compliance to the same, the applicant submitted further documents vide letter dated 27.01.2012. In pursuance to the said documents being sent by respondent no.4 to respondent no.5, once again it was asked by respondent no.4 to submit more documents including the divorce certificate issued by the Court of Law (Annexure A6). The matter remained pending for want of documents asked by respondent no.5, and finally the applicant was advised to approach the competent Court to get the decree of divorce. Accordingly, the applicant and her Ex-husband filed an application for mutual divorce before the Family Court, Jodhpur on 20.05.2013. The Hon'ble Court granted a decree of divorce vide order dated 04.04.2014 (Annexure A8). On receipt of the decree of divorce, the applicant approached respondent no.4 vide application dated 01.08.2015 praying for grant of family pension (Annexure A10). Respondent no.4

forwarded the details to respondent no.5 and stated that as per the requirement, a decree of divorce has been obtained by the applicant. Thereafter, respondent no.4 on the letter from respondent no.5 informed the applicant vide letter dated 03.12.2015 (Annexure A1) that she was not dependent on her father as she has been divorced after the death of her parents and therefore she is not entitled for family pension.

3. After issue of notice, the respondents filed their reply dated 03.05.2017 stating that the father of the applicant had nominated his wife Late Smt. Geeta Devi to receive family pension in case of his death. Upon superannuation, respondent no.5 extended the benefit of pension to the concerned employee. The father of the applicant expired on 29.11.2010. Consequently, the family pension was granted in favour of late Smt. Geeta Devi being nominated and wife of deceased employee. But unfortunately, Smt. Geeta Devi also died on 09.02.2011. One Shri Bharu Singh, son of the deceased employee moved an application dated 24.02.2011 requesting that the family pension may be sanctioned in favour of the applicant being divorcee daughter of the deceased employee. On receipt of the documents from the applicant, the same was forwarded to respondent no.5 for sanction of family pension, but the same was returned vide letter dated 02.03.2012. Asking the applicant to submit a decree of divorce from the competent Court of Law, the applicant, thereafter submitted an application along with a decree of divorce dated 22.04.2014 and claimed the family pension being divorced daughter of the deceased employee. The case of the applicant was thereafter again submitted to respondent no.5 for sanction of family pension along with the requisite documents vide letter dated 30.03.2015 but the same was turned down by respondent no.5 vide letter dated 27.05.2015 on the ground that the deceased employee and his wife had died on 29.11.2010 and 09.02.2011

respectively and the applicant's divorce has taken place on 04.04.2014 and since at the time of death of deceased employee, in view of the provisions contained, in OM dated 11.09.2011, the applicant is not entitled for family pension. After the said refusal, an appeal was sent to respondent no.5 vide letter dated 14.08.2015 with a request to sanction the family pension. In view of the fact that the applicant has already obtained customary divorce way back on 13.08.1991 but the said appeal has been turned down vide letter dated 03.11.2015, and informed to the applicant vide letter dated 03.12.2015 by respondent no.5, on the ground that in the absence of any reference of customary divorce under the pension Rules, the effective date of divorce is to be treated as 04.04.2014, which is the actual date of decree of divorce obtained as per law. Thus, the respondents stated that the applicant is not entitled to any pension as per the provisions contained in OM dated 11.09.2013.

4. Arguments advanced by Shri K.K. Shah, learned counsel for the applicant and Shri K.S. Yadav, counsel for respondents no.1 to 5 were heard and perused the material available on record.

5. It is the plea of the respondents that the father of the applicant expired on 29.11.2010 and the mother of the applicant also expired on 09.02.2011. The father of the applicant during his service has nominated his wife, Smt. Geeta Devi, to receive family pension, but unfortunately, the mother of the applicant also expired on 09.02.2011. The present applicant was the daughter of late Shri Hari Singh Rathore, who was serving with the respondent Department as Water Carrier under respondent no.4 had obtained a customary divorce on 13.08.1991 as per the customs prevailing in their community. On the request of the respondents, the brother of the applicant had submitted all the required documents including the document of customary divorce. It is at

the request of the respondents and the advice of the respondents that the applicant approached the Family Court to obtain a decree of divorce from the competent Court. The said application was made by the applicant on 20.05.2013, but the Family Court granted a decree of divorce vide its order dated 04.04.2014. Thereafter, the said documents were submitted to the respondents, the respondents refused to grant the family pension only on the ground that the divorce obtained by the applicant was after the death of her parents, and therefore, as she is not dependent on her parents, she is not entitled for family pension. The respondents stated that there is no description of customary divorce in the CCS (Pension) Rules and as the divorce is obtained only on 04.04.2014 i.e. after the death of her parents, the applicant is not dependent on her father and also not entitled for family pension. The applicant further states that even in the decree of divorce obtained from the Family Court, it is clearly mentioned in the said decree that the applicant has already taken divorce as per her customs on 13.08.1991.

6. The respondents rebutted the claim of the applicant and stated that the father of the applicant expired on 29.11.2010 and the mother of the applicant also expired on 09.02.2011. The decree of divorce submitted by the applicant is only dated 04.04.2014. The respondents further stated that since there is no mention of customary divorce in CCS (Pension) Rules, family pension is denied to the applicant as it is clear from the decree of divorce obtained on 04.04.2014, at that moment, both the parents of the applicant had expired and therefore it is clear that the applicant is not dependent on her father and so she is not entitled for family pension.

7. Heard the rival contention of both the parties. It is clear that the father of the applicant superannuated on 29.02.1992. The father of the

applicant expired on 29.11.2010 and the mother of the applicant also expired on 09.02.2011. In the nomination submitted by the father of the applicant, only name of applicant's mother was mentioned for family pension. It is after the death of the parents, the brother of the applicant submitted an application for grant of family pension to the divorced daughter of late Shri Hari Singh Rathore. After submitting all the documents, the respondents clarified that they require a decree of divorce obtained from the Court of Law. It is only after this request made by the respondents, the applicant had obtained the decree of divorce vide its order dated 04.04.2014 from the Family Court, Jodhpur. It is clearly mentioned in the decree of divorce that the parties are separated and as they have already divorced as per their customs on 13.08.1991. As per the DoP&T OM dated 11.09.2013, it is clear that the divorced daughter, who has divorced with her husband after the death of the parents are not dependent on her parents and they are not entitled for family pension of divorced daughter. In the present case, the applicant has already obtained divorce from her husband as per her customs on 13.08.1991 and the father of the applicant expired on 29.11.2010. Therefore, it is very clear that prior to the death of the applicant's father, the present applicant had already obtained divorce. Therefore, the submission of the respondents is that in the present case, the father of the claimant died on 29.11.2010 and mother of the claimant also died on 09.02.2011 and divorce of the claimant held on 04.04.2014. It means after the death of the parents, the claimant cannot be accepted for grant of family pension, therefore, the decree of divorce obtained from competent Court dated 04.04.2014 by the applicant was only on the request made by the respondents. In fact, the applicant was already divorced on 13.08.1991, therefore, the submission of the respondents for denial of family pension on the ground that she is not dependent on her father on the date of a

decree of divorce i.e. 04.04.2014 cannot be accepted. It is very clear that even from the decree of divorce obtained by the applicant dated 04.04.2014, there is a clear mention that the applicant has already obtained divorce on 03.08.1991, therefore, merely stating that there is no mention of customary divorce in CCS (Pension) Rules, cannot be accepted for denial of family pension. Therefore, the impugned order dated 03.12.2015 deserves to be quashed and set aside and accordingly the same is required to be done. Accordingly, the applicant is entitled for grant of family pension as a divorced daughter from the date of death of her mother i.e. 09.02.2011 and the same be granted to her within a period of three months from the date of receipt of a certified copy of this order.

8. In view of the observations made above, the impugned order dated 03.12.2015 (Annexure A1) is hereby quashed and set aside as the applicant is entitled for family pension with effect from 09.02.2011 that is after the death of her mother on 09.02.2011.

9. The OA is accordingly allowed with further direction as mentioned above. No order as to costs.

(HINA P. SHAH)
MEMBER (J)

Dated: 01.10.2018
Place: Jodhpur

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