



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

O.A. NO. 350/01346/2016

Coram : Hon'ble Ms. Bidisha Banerjee, Judicial Member

Smt. Jyotsna Ghosh,
Daughter of Late Anil Kumar Ghosh,
Residing at Village – Ichapur,
Post Office – Ankhona,
Police Station – Ketugram,
District – Burdwan,
Pin – 713 129.

..... Applicant.

-Versus-

1. Union of India,
Service through General Manager
(Postal Accounts and Finance),
West Bengal Postal Circle,
P- 36, C.R. Avenue,
Yogayog Bhawan,
Kolkata – 700 012.
2. Senior Superintendent of Post Offices,
North Kolkata Division,
Kolkata – 700 037.
3. The Post Master,
Beadon Street,
9/3, Beadon Street,
Kolkata – 700 006.

..... Respondents.

For the applicant : Mr. A. Samanta, Counsel

For the respondents : Mr. B.P. Manna, Counsel

Heard on 21.06.2018

Order dated : 20.07.2018

ORDER

Per Bidisha Banerjee, Judicial Member

The legality and propriety of the following order is under challenge in this

O.A.

The order is extracted verbatim hereinbelow for clarity.

"Sub: Family Pension case of Smt. Jyotsna Ghosh, Divorced daughter of Anil Kr. Ghosh and late Purnima Ghosh holding PPO No CA 49880.

Ref: Your letter No. C(N)4-01/2011 dated 06/02/2015

In response to your above referred office letter regarding the captioned subject this to intimate you that on scrutiny of the documents furnished it has been observed that the dependency criteria applicable to a divorced daughter is not established in this case since the mother of the claimant died on 04/05/2009 when the claimant and her husband Shri Ashoke Kr. Pal were living conjugal life and obviously Smt. Jyotsna Pal (Ghosh) was dependent on her husband. The conjugal life ended on 05.07.2011. As such the family pension claimed by Smt. Joytsna Ghosh, Divorced daughter of Late Anil Kr. Ghosh and late Purnima Ghosh is not admissible as per dependency criteria laid down in DOPT order No. 1/13/09-P&W(E) dated 11/09/2013.

All the documents in original are returned herewith."

2. The brief facts leading to the application are as under:

The applicant is a divorcee daughter of deceased Anil Kr. Ghosh, who passed away on 29.1.05. His wife, the family pensioner expired on 4.5.09. The applicant, while still a married daughter, was driven out from matrimonial home on 26.8.97. She came back to her parents immediately thereafter and resided with them. She filed suit for divorce on 29.6.09 and the fact of her being driven out 26.8.97 is duly recorded in the decree that she obtained on 28.4.11. She has prayed for family pension as divorced daughter but her prayer has been turned down vide the impugned order without considering the fact that she returned back to her parental family fold in 1997, i.e. during the lifetime of employee. She is aggrieved as a later circular has been applied to reject her prayer for family pension as divorced daughter of the deceased.

3. In regard eligibility of divorced daughters to family pension, Rule 54 sub rule 6(iii) of CCS (Pension) Rule, 1972 lays down the following:

"The period for which family pension is payable shall be as follows:

...(iii) subject to second and third provisos, in the case of as unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier;

Provided also that the grant or continuance of family pension to an unmarried or widowed or divorced daughter beyond the age of twenty-five years or until she gets married or re-married or until she starts earning her livelihood, whichever is the earliest, shall be subject to the following conditions, namely:-

- (i) the family pension shall be initially payable to the minor children (mentioned in Clause (ii) or Clause (iii) of this sub-rule) in the order set out in Clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of twenty-five years; and
- (ii) there is no disabled child eligible to receive family pension in accordance with the second proviso of this sub-rule;

EXPLANATION 1. – An unmarried son or an unmarried or widowed or divorced 1. Substituted vide GI, Dept of P. & P.W., Notification No. F. 1/33/2012-P&PW (E) dated the 27th December, 2012 published as S.O. No. G.S.R. 938 (E) in the Gazette of India dated the 27th December, 2012 [daughter except a disabled son or daughter shall] become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.

EXPLANATION 2. – The family pension payable to such a son or a daughter or parents or siblings shall be stopped if he or she or they start earning his or her or their livelihood.

EXPLANATION 3. – It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after 1. Substituted vide GI, Dept of P. & P.W., Notification No. F. 1/33/2012-P&PW (E) dated the 27th December, 2012 published as S.O. No. G.S.R. 938 (E) in the Gazette of India dated the 27th December, 2012 [her re-married or by the disabled son or daughter or by parents] to the Treasury or Bank, as the case may be, once in a year that she or he or they have not started earning her or his or their livelihood.

EXPLANATION 4. – For the purpose of this sub-rule, a member of the family shall be deemed to be earning his or her livelihood if his or her income from other sources is equal to or more than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.

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(14) For the purposes of this rule, -

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2. See also GID (23) below this rule (b) "family" in relation to a Government servant means -

(i) wife in the case of a male Government servant; or husband in the case of a female Government servant. 3. The words "provided the marriage took place before the retirement of the Government servant" were deleted by G.I., Dept. Of P & P.W., Notification No. 1/87/89-P. & P.W. (C), dated the 12th November, 1990, published as S.O. No. 3269 in the Gazette of India, dated the 8th December, 1990. All post-retiral spouses are eligible for family pension from the date following the date of death of the pensioner even if the marriage is prior to the date of notification. [* * *]

(ia) a judicially separated wife or husband, such separation not being granted on the ground of adultery 3. The words "provided the marriage took place before the retirement of the Government servant" were deleted by G.I., Dept. Of P & P.W., Notification No. 1/87/89-P. & P.W. (C), dated the 12th November, 1990, published as S.O. No. 3269 in the Gazette of India, dated the 8th December, 1990. All post-retiral spouses are eligible for family pension from the date following the date of death of the pensioner even if the marriage is prior to the date of notification. [* * *] and the person surviving was not held guilty of committing adultery.

(ii) unmarried son who has not attained the age of twenty-five years and unmarried or widowed or divorced daughter, including such son and daughter adopted legally;"

4. Department of P & WP OM dt. 11.9.13 on "Eligibility of widowed/divorced daughters for grant of family pension" clarifies as under:

"Provision for grant of family pension to a widowed/divorced daughter beyond the age of 25 years has been made vide OM dated 30.08.2004. This provision has been included in clause (iii) of sub-rule 54 (6) of the CCS (Pension), Rules, 1972. For settlement of old cases, it was clarified, vide OM dated 28.04.2011, that the family pension may be granted to eligible widowed/divorced daughters with effect from 30.08.2004, in case the death of the Govt. Servant/pensioner occurred before this date.

2. This Department has been receiving communications from various Ministries/ Departments seeking clarification regarding eligibility of a daughter who became widowed/ divorced after the death of the employee/pensioner.

3. As indicated in Rule 54(8) of the CCS (Pension) Rules, 1972, the turn of unmarried children below 25 years of age comes after the death or remarriage of their mother/father, i.e., the pensioner and his/her spouse. Thereafter, the family pension is payable to the disabled children for life and then to the unmarried/divorced daughters above the age of 25 years.

4. It is clarified that the family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. A child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the

time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes. Similarly, family pension to a widowed/divorced daughter is payable provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents and on the date her turn to receive family pension comes.

5. As regards opening of old cases, a daughter if eligible, as explained in the preceding paragraph, may be granted family pension with effect from 30th August, 2004. The position is illustrated through an example, Shri A, a pensioner, died in 1986. He was survived by his wife, Smt. B, a son Shri C and a daughter, Kumari D, the daughter being the younger, Kumari D married in 1990 and got widowed in 1996. Smt. B died in 2001. Thereafter, Shri C was getting family pension, being disabled, and died in 2003. Thereafter, the family pension was stopped as Kumari D was not eligible for it at that time. She applied for family pension on the basis of O.M., dated 30th August, 2004. Since she was a widow and had no independent source of income at the time of death of her mother and on the date her turn came, she may be granted family pension. The family pension will continue only till she remarries or starts earning her livelihood equal to or more than the sum of minimum family pension and dearness relief thereon.

6. This is only a clarification and the entitlement of widowed/divorced daughters would continue to be determined in terms of O.M., dated 25/30th August, 2004, read with O.M., dated 28.4.2011."

5. Further Department of P & P.W. issued OM dated 11.10.06 which stipulates as under:

"The Family Pension to Widow/ Divorced daughters is admissible irrespective of the fact that divorce/ widowhood takes place after attaining the age of 25 years of before, in other words the Family Pension will be admissible without age restriction subject to other conditions being satisfied."

6. A bare perusal of the provisions supra and O.M.s would irrefutably and inarguably demonstrate and exemplify that such divorced daughters were never to be considered as ineligible if they were not divorced during lifetime of employee or family pensioner or filed suit-during their lifetime. Government never intended to deprive such widowed/ divorced daughters of their family

pension. Applicant therefore ought not to have been discriminated on the basis of date of divorce or date of filing suit for divorce.

7. The impugned rejection order has been issued in view of the provisions of the subsequent OM dt. 19.7.17, which reads as under:

"OFFICE MEMORANDUM

Sub: Eligibility of divorced daughters for grant of family pension - clarification regarding.

Provision for grant of family pension to a widowed/divorced daughter beyond the age of 25 years has been made vide OM dated 30.08.2004. This provision has been included in clause (iii) of sub-rule 54 (6) of the CCS (Pension), Rules, 1972.

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6. The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to grant family pension to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the life-time of the employee/pensioner or his/her spouse but divorce took place after their death - provided the claimant fulfils all other conditions for grant of family pension under rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce."

8. In my considered opinion, inasmuch as the applicant's right as divorced daughter to receive family pension accrued long before introduction of the circular dated 19.07.17 (supra), its application with retrospectivity is bad.

9. Hence it is ordered that the applicant's case shall be considered afresh in terms of CCS (Pension) Rules and circulars operating in the field as on the date of death of the employee or date of filing divorce suit or obtaining divorce whichever is beneficial to her, keeping in view the fact that she was driven out from matrimonial home in 1997, that is during the life time of her parents and she has claimed to be dependent daughter of deceased as on the date of death of the employee.

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10. Appropriate orders shall be issued by 2 months from the date of receipt of a copy of this order.
11. O.A. stands disposed of. No costs.

(Bidisha Banerjee)
Member (J)

DRH