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CENTRAL ADMINISTRATIVE TRIBUNAL CALCUTTA BENCH

No. OA 350/01361/2015

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

SUNITI SUTRADHAR (DEY)

VS

UNION OF INDIA & ORS.

For the applicant : Mr. K. Sarkar, counsel

For the respondents : Mr. B. L. Gangopadhyay, counsel

Order on : 1.7.16

O R D E R

Ms. Bidisha Banerjee, J.M.

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. This is the second journey of the applicant before this Tribunal. The applicant is aggrieved due to the fact that this Tribunal passed an order dated 1.6.15 directing the respondents to consider the case of the applicant for grant of family pension on the basis of the representation. The respondents have denied her claim by an order dated 3.7.2015 which reads as under :

"In compliance with the order dated 1.6.15 passed by the Hon'ble Central Administrative Tribunal, Kolkata in the above subject OA being respondent No.5 the undersigned, on behalf of the other respondents, has examined and carefully gone through the entire gamut and observed as under:

Kristo Kumar Dey, father of the applicant retired from service on 4.12.1967 and subsequently died on 23.4.1986 and Laxmi Dey, mother of the applicant died on 15.7.99. It is found that Smt. Suniti Sutradhar got married on 20.2.1970 and her husband namely Nirmal Suradhar died on 2.6.11.

It is clear from the above that the applicant was leading a married life at the time of death of her parents, therefore the applicant is not entitled to get Family Pension in terms of Dept. of Pension and Pensioner's Welfare Office Memorandum No. 1/13/09-P&PW(E), dated 11th Sept./2013. As per the above stated Office Memorandum, a daughter who is leading a married life at the time of death of her parents does not fulfil the condition of Widowed/Divorced attached to the grant of Family Pension.

In view of above, at this stage the undersigned has no option but to reject the claim of the applicant."

3. The respondents in their reply have submitted that the applicant's father who was a Railway employee died on 23.4.1986. Subsequently the applicant's mother who was receiving the family pension, died on 15.7.1999. The applicant was a married lady on the date of death of her mother and has become widow on 2.6.11 i.e. after about 12 years of the death of her mother. Hence the prayer of the applicant for grant of her family pension being a widow daughter could not be accepted since there is no such rule and the applicant has been informed accordingly by letter dated 3.7.15.

4. Heard both the ld. Counsels and perused the materials on record.

5. In regard to the relief of family pension claimed in the present OA, it could be noticed that, in **OA 1194/15 (Ratna Sarkar -vs- UOI & Ors.)** in a case concerning a widowed daughter of deceased employee who was denied family pension on the ground that she was married as on the date of death of the employee and got widowed after the death of family pensioner mother, alike the present applicant, this Tribunal has passed the following order : (extracted hereunder for clarity)

"In regard to eligibility for family pension, the following legal provisions and propositions could be noticed :

(i) As per Rule 54(6) of CCS (Pension) Rules the period for which family pension is payable to the family members of the deceased employee (widow, son, daughter), shall be as follows:-

(i) *in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;*

(ii) *in the case of a son, until he attains the age of twenty-five years; and*

(iii) *in the case of an unmarried daughter, until she attains the age of twenty-five years or until she gets married, whichever is earlier;*

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Xxx

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EXPLANATIONS -

(a) Deleted

(b) A daughter shall become ineligible for family pension under this sub-rule from the date she gets married.

(c) 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.

***** (14) For the purposes of this Rule'

2(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.

(ia) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(ii) son who has not attained the age of [twenty five] years and unmarried daughter who has not attained the age of [twenty five] years including such son and daughter adopted legally.

Irrefutably and indubitably as per pension rules only unmarried daughters were eligible for family pension that too till they attained 25 years of age.

(ii) Although the Pension Rules expressly excluded the divorced and widowed daughters of deceased Govt. Servants from earning family pension, by virtue of 5th CPC recommendation incorporated vide OM dated 27.10.97 they were expressly included with the ambit of "family" under Pension Rules by the Ministry of Personnel, Public Grievances and Pensions, Dept. Of Pension and Pensioners Welfare to bestow upon them the right to receive family pension without discriminating them on the basis of the date of widowhood/divorce i.e. whether divorced/widow during the life time of employee or family pensioner. Subsequently, on 30.8.04 they issued an OM on "Eligibility of divorced/widowed daughter for grant of family pension" even after attaining 25 years of age.

The OM envisaged infra : (extracted with supplied emphasis for clarity)

"The undersigned is directed to say that as per clauses (ii) and (iii) of sub-rule (6) of Rule 54 of the C.C.S. (Pension) Rules, 1972 read with clause (b) of Para 7.2 of this Department's O.M. No.45/86/97-P&PW (A)-Part I dated the 27th October 1997, son/daughter including widowed/divorced daughter shall be eligible for grant of family pension till he/she attains the age of 25 years or up to the date of his/her marriage/remarriage, whichever is earlier (subject to income criterion to be notified separately). The income criterion has been laid down in this Department's O.M. No.45/51/97-P&PW (E) dated the 5th March 1998 according to which, to be eligible for family pension, a son/daughter (including widowed/divorced daughter) shall not have an income exceeding Rs.2550

per month from employment in Government, the private sector, self employment etc. Further orders were issued vide this Department's O.M. No. 45/51/97-P&PW (E)/Vol.II) dated 25th July 2001 regarding eligibility of disabled divorced/widowed daughter for family pension for life subject to conditions specified therein.

2. Government has received representations for removing the condition of age limit in favour of divorced/widowed daughter so that they become eligible for family pension even after attaining the age limit of 25 years. The matter has been under consideration in this Department for sometime. In consultation with the Ministry of Finance, Department of Expenditure and the Ministry of Law and Justice, Department of Legal Affairs etc., it has now been decided that there will be no age restriction in the case of the divorced/widowed daughter who shall be eligible for family pension even after their attaining 25 years of age subject to all other conditions prescribed in the case of son/daughter. Such daughter, including disabled divorced/widowed daughter shall, however, not be required to come back to her parental home as stipulated in para 2(ii) of this Department's O.M. dated 25th July 2001, which may be deemed to have been modified to that extent."

A cursory glance at the OM would demonstrate that it neither explicitly nor impliedly required that such divorced/widowed daughter in order to get family pension (even after attaining the age of 25 years) had to be "unmarried" as on the date of death of the employee. The circular even provided that such daughters need not come back to her parental home to be eligible. Therefore this OM also did not expressly exclude such daughters who were married as on the date of death of the employee, but got divorced/widowed later on.

(iii) Further on 11.9.13 a clarificatory OM was introduced to clarify who a dependent child, in terms of Rule 54(8) of Pension Rules would be.

It read thus:

"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/widowed/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 fulfills 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 OM, dated 25/30th August, 2004, read with OM, dated 28.4.2011."

A bare perusal of the circular would reveal that any child not earning more than the minimum of family pension and DR, was to be considered as a dependent of his/her parents, and earn family pension irrespective of whether she was an unmarried or a divorced or a widowed daughter provided she fulfilled the condition of not earning more than minimum of family pension plus DR on the date of her turn to receive family pension came after the death of the employee/family pensioner spouse or disabled children. Therefore by way of this circular also no distinction was made between daughters divorced/widowed as on the date of death of employee and daughters married as on the date of death of employee but subsequently divorced/widowed.

4. In **Soleman Bibi -vs- E.I.Rly. [AIR 1933 Cal 358]** the Hon'ble

Court observed as under -

"The comment which occurs to me is as follows: a daughter undoubtedly acquires a new relationship on marriage. She does not however lose the old relationship; she remains a daughter. Once a daughter always a daughter: qua relationship she is a daughter before, during and after marriage. On the other hand the legislature had attached a qualification or condition that in order to participate a female child must not only be a daughter, but she must be an "unmarried" daughter. The question is what is the meaning of that qualification. Does it exclude daughters once, but no longer, married? I think not. It appears to me that the important portion of the context to read in connexion with the definition

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is the operative part of Section 8 which provides for one payment to be distributed at a special time or period-the death of the employee-among particular persons. According to the English authorities and also I think in common conversation, when "unmarried" forms a qualification in the description of a person who is to receive a sum of money at a definite time or period, the meaning "not married" appears to be appropriate: see Leshingham Trust 24 Ch. D. 703 and Jarman on Wills in particular at p. 1252. For these reasons I agree with the decision in 13 Lah. 228 (1) and construe the expression "unmarried daughter" in Section 2, 1(d) of the Act as including widowed daughter."

(emphasis supplied)

Going by the aforesaid proposition, if the term "non-married daughter" would include "widowed daughter", there is no sufficient or good reasons why the present applicant a "widowed daughter" who had broken all her ties with her husband's family and had returned back to her parents home, who could even legally re-marry, be not considered as a "non married" person and a dependent of the deceased employee or his family members, to be considered eligible for family pension.

5. Further, it would be noted that the Pension Rules, extracted supra, expressly and unambiguously debar family pension to a daughter who is married of prior to attaining the age of 25 years whereas unemployed married sons are not so debarred i.e. even a married son, if unemployed, is entitled to family pension till he attained the age of 25 years. Therefore the rules clearly demonstrate and propagate gender discrimination.

In Savita (Ms) & Anr. -vs- Union of India [1996 (2) SCC 380],

the Hon'ble Apex Court considered the question of gender discrimination by the Railways in respect of the benefits to be given to the dependent after the death of the deceased employee and struck down the circular letter of the Railway Board where married daughters were disentitled to have allotment of Railway quarters after the death of the Railway employee in harness.

In Valsamma Paul (Mrs.) -vs- Cochin University & Ors. [1996

(3) SCC 545], the Hon'ble Apex Court made the following observations :

"All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Convention for Elimination of all forms of Discrimination Against Women (for short, "CEDAW") was ratified by the U.N.O. on December 18, 1979 and the Government of India had

ratified as an active participant on June 19, 1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity. When the respondents do not deprive widowed sons or divorced."

6. As enumerated supra it could be noted that all the circulars of 27.10.97, 30.8.04 and 11.9.13, were conspicuously silent about the daughters who were married as on the date of death of the employee but were widowed/divorced after the death of the family pensioner and have come back to the house of the deceased after their divorce or widowhood, meaning thereby that they were never expressly excluded from earning the benefit.

7. However, the Department of Pension and Pensioners' Welfare introduced the subsequent clarificatory circular on 18.09.2014 (extracted supra) which expressly took away the right of such daughters who were married as on the date of death of the employee but got divorced/widowed after the death of family pensioner spouse or child and who were already bestowed with family pension by virtue of circular of 1997, 2004 etc (supra). It clarified as under:

OFFICE MEMORANDUM

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

The undersigned is directed to refer to Ministry of Railways (Rail Board)'s OM No. F(E)III/2007/PNI/5, dated 28th August, 2014 on the above subject.

2. *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.*

3. *It was further clarified vide OM dated 11th September, 2013 that if a daughter became a divorce/widow during the period when the pension/family pension was payable to her father/mother, such a daughter, on fulfilment of other conditions, shall be entitled to family pension. The clarification was aimed at correctly interpreting*

the conditions of eligibility of a widowed/divorced daughter in terms of the concept of family pension under the CCS (Pension) Rules, 1972. It was also stated that it was only a clarification and the entitlement of widowed/divorced daughter would continue to be determined in terms of OM dated 25th/30th August, 2004 read with OM dated 28th April, 2011. It implies that the family pension should discontinue in those cases where it had been sanctioned in pursuance of these OM but without asking into consideration that the widowed/divorced daughter was leading a married life at the time of death of her father/mother, whoever died later and was, therefore ineligible for family pension. It would be appropriate that in order to maintain equality before law, family pension payable to such daughters is discontinued. However, recovery of the already paid amount of family pension would be extremely harsh on them and should not be resorted to.

4. *This issues with the approval of Secretary (Pension)."*
8. Although it was spelt out in the circular that it was issued to maintain "equality before law", it was actually aimed at discriminating between the daughters on the basis of their date of divorce or widowhood.
9. It was on the basis of this clarificatory circular that the impugned order dated 28.01.2015 and the impugned speaking order dated 03.07.2015 were issued and the family pension that the applicant was bestowed with by virtue of parent circulars dated 27.10.97, 30.8.04 and 11.09.13, was discontinued arbitrarily.

The speaking order is extracted verbatim hereinbelow for clarity:

"EASTERN RAILWAY

SPEAKING ORDER

Compliance of order dt. 01.06.2015 of the Hon'ble CAT/CAL passed in OA No. 350/00728/2015, Smt. Ratna Sarkar-vs- U.O.I & Ors. (The directive part is Para-3).

In pursuance of the orders passed by the Hon'ble CAT/CAL in OA No. 350/00728/2015, the under signed being Sr. Personnel Officer, E. Rly. Sealdah & Respondent No. 5, have examined the matter carefully, wherein it is seen that family pension was sanctioned in favour of Smt. Ratna Sarkar, widow daughter of Late Nitya Gopal Das, Ex. Driver/RHA consequent upon death of her parents and her husband w.e.f. 25.08.2004.

It is again seen that her dependency criteria was not fulfilled in terms of RBE No. 99/2013 & CPO/E.Rly./KKK's Sl No. 128/2013, wherein it is stated that "Family Pension is payable to the children as they are considered to be dependent on the Govt. Servant/Pensioner on 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 condition of eligibility for family pension at the

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time of death of the Govt. Servant or his/her spouse; whichever is later, are only eligible for family pension". So, on scrutiny of her appeal it is revealed that her (i) Father died on 19.05.1985, (ii) her mother died on 05.05.1991 and (iii) her husband died on 03.08.1993.

In view of above clarification, her family pension has been stopped vide Sr. DFM/E. Rly/SDAH's letter No. Das/PEN/WD/DD/14-15, dt. 11.02.2015 with immediate effect in terms of RBE No. 109/2014 and CPO/E.Rly/KKK's Sl No. 125/2014 wherein it is cleared that "Family Pension in respect of widowed/divorced daughter's who got widowhood/divorcee after death of their parents will not be considered and where family pension already drawn in this cases would be discontinued with immediate effect. However, no recovery would be made."

In view of above observation, family pension in favour of Smt. Ratna Sarkar, widow daughter of late Nitya Gopal Das, Ex. Driver/RHA has been discontinued due to non-fulfilment of her dependency criteria in terms of RBE No. 99.2013 & RBE No. 109/2014.

The case is accordingly disposed of in pursuance of order dt. 01.06.2015 in OA No. 350/00728/2015 passed by the Hon'ble CAT/Calcutta."

10. During the course of hearing, the arguments that were advanced by the respondents was that a daughter unless unmarried/widowed/divorced as on the date of death of the employee could not be considered as a dependent and hence ineligible to succeed the widow mother as family pensioner. Such an argument in view of **Soleman Bibi supra**, is illogical in as much as even upon her marriage she would still remain a daughter and after her widowhood or divorce she would become dependent on her family members and a daughter widowed/divorced as on the date of death of the employee and a daughter widowed/divorced after his death, would be equally distressed and helpless. Both have to come back to their parental home and depend upon the family members for sustenance.

11. The 11.9.13 circular is explicit that after death of the father and the family pensioner, family pension is payable to the disabled children for life and then to unmarried/widowed/divorced daughter above the age of 25 years. Therefore, if the object sought to be achieved by introduction of the circular is to provide succour to a widowed/divorced daughter, even above the age of 25 years, by way of family pension after the death

of their parents where as a qualification deprives a daughter widowed/divorced after the death of the parents, from earning family pension, there is no reasonable nexus of the qualification with the object sought to be achieved. It would result in discriminating between the daughters divorced/widowed as on the date of death of the employee vis-a-vis those divorced/widowed after their death, that too without any justification or basis, but on the basis of the date of their widowhood/divorce, which is ridiculous and fallacious.

12. Furthermore, the Pension Rules never provided for Family Pension to widowed or divorced daughters. The modification of 27.10.97 and the circulars of 30.8.04 and 11.9.13 were introduced as a social measure to grant relief to all widowed or divorced daughters in addition to unmarried daughters to save them from destitution and vagrancy and dishonour. When no distinction was expressly made in them, such circulars ought to have been uniformly applied to all widowed/divorced daughters of deceased Govt. servants irrespective of their date of widowhood/divorce. An exclusion of the married daughters, who got widowed or divorced later on and came back to the family of the deceased, from the ambit of such circulars by way of a subsequent clarification of 2014, could neither be comprehended nor countenanced. The respondents ought not to have resorted to a macro compartmentalisation of widowed/divorced daughters on the basis of a micro distinction on the basis of the date of divorce/widowhood to discriminate between widowed/divorced daughters.

13. The reasoning contrived by the respondents that the same daughter who was widowed or divorced during the lifetime of the employee or his spouse/family pensioner would be his dependent, whereas if widowed/divorced after the death of her parents would not be a dependent, is ridiculous and outlandish in as much as after the death of her parents a widowed/divorced daughters would be much more distressed having no one to fall back upon. The reason contrived is

enough to shock every nerve. It would leave anyone in a state of quandary to visualise the manner in which discrimination is being meted out to these helpless daughters of our country who have lost her parents, husband and may not have any earnings of their own for their sustenance. Such a treatment is highly discriminatory and improper.

14. In such view of the matter, I am of the considered opinion that it is not the date of divorce or widowhood which should be the determining factor rather it is the state or condition which should have a bearing, i.e. whether such divorced/widowed daughter is really distressed or is earning more than minimum of family pension plus DR as the condition of eligibility the circular dt. 11.9.13 envisages.

15. No law has been cited to demonstrate that once family pension to the widow or family pension was stopped due to their death, it could not be restarted in favour of any other legal heir following an interregnum upon his/her acquiring eligibility subsequent to the death of the family pensioner widow/disabled child.

In this connection, it would also be useful to quote the Ministry of Personnel, Public Grievances & Pension circular dated 28.4.11: (extracted with supplied emphasis for clarity)

OFFICE MEMORANDUM

Subject: Extension of scope of family pension to widowed/divorced/unmarried daughter and dependent disabled siblings of Central Government servants/pensioners- Clarifications-reg.

The undersigned is directed to state that as per the existing provisions of CCS (Pension)Rules, 1972 as amended from time to time, the son/daughter of a Government servant/Pensioner is eligible for family pension upto the date of his/her marriage/remarriage or till he/she starts earning or till the age 25 years, whichever is earlier. Further, a disabled son/daughter of a Government servant/Pensioner suffering from any disorder or disability of mind, including mentally retarded, or who is physically crippled or disabled, is eligible for family pension for life subject to the fulfilment of certain conditions. Subsequently orders were issued vide this Department's O.M.No.45/86/97-P&PW(A) dt.27.10.97 and No.1/19/03-P&PW(E) dt.30.8.2004 making divorced/widowed daughters eligible for family pension even after attaining the age limit of 25 years subject to the fulfilment of certain conditions. It was subsequently clarified vide this department's O.M.No.1/19/03-P&PW(E) dt. 11.10.2006 that family pension to widowed/divorced daughters is admissible irrespective of the fact that the divorce/Widowhood takes place after attaining the age of 25 years or before.

2. Further, orders have been issued vide this Department's O.M.No.1/19/03-P&PW(E) dt. 6th September, 2007, whereby an unmarried daughter of a Government servant/Pensioner beyond 25 years of age, has been made eligible for family pension at par with the widowed/divorced daughter subject to fulfilment of certain conditions. However, family pension to the widowed/divorced/unmarried daughters shall be payable in order of their date of birth and the younger of them shall not be eligible for family pension unless the next above has become ineligible for grant of family pension. Further the family pension to widowed/divorced/unmarried daughters above the age of 25 years shall be payable only after the other eligible children below the age of 25 years have ceased to be eligible to receive family pension and that there is no disabled child to receive the family pension.

3. Subsequently, orders have been issued vide this Department's O.M.No.1/15/2008-P&PW(E) dt. 17.8.2009 whereby dependent disabled siblings of a Government servant/Pensioner have been made eligible for family pension for life subject to the fulfilment of certain conditions.

4. Representations have been received in this Department from various quarters (i.e. Pensioners associations, etc) to the effect that the claims for family pension of widowed/divorced/unmarried daughters and dependent disabled siblings are not being entertained by certain Ministries/Departments on the plea that their names do not appear in the details of family members submitted by the Government servant/pension to the head of office from where he/she had retired besides, in cases where a Government servant/pensioners had expired prior to the issue of above referred orders by this Department, the claims of widowed/divorced/unmarried daughters, etc for family pension are not being entertained by Ministries/Departments on the plea that they were not eligible for family pension at the time of retirement/death of the Government servant or death of the pensioner. This Department has been requested for issue of appropriate clarificatory orders in the matter so as to settle the family pension claims of the aggrieved widowed/divorced/unmarried daughters. etc, of the government servants/Pensioners.

5. The matter has been considered in this Department in consultation with Department of Expenditure, Ministry of Finance. It is hereby clarified that subject to fulfilment of other conditions laid down therein, the widowed/divorced/unmarried daughter of a Government servant/Pensioner will be eligible for family pension with effect from the date of issue of respective orders irrespective of the date of death of the Government servant/pensioner. Consequently, financial benefits in such cases will accrue from the date of issue of respective orders. The cases of dependent disabled siblings of the Government servants/Pensioners would also be covered on the above lines.

6. All Ministries/Departments are requested kindly to settle the family pension claims of widowed/divorced/unmarried daughters and dependent disabled siblings accordingly on priority. They are also requested to bring these orders to the notice of their attached/subordinate organizations for compliance.

7. This issues with the concurrence of the Ministry of Finance, Department of Expenditure vide their U.O.No.97/EV/2011 dated 06.04.2011.

8. In so far as their applicability to the personnel of Indian audit and accounts department is concerned, these orders are being issued in

consultation with the C & AG of India vide their U.O.No.65-Audit (Rules)/ 14-2010 dt. 26.4.2011.

9. *Hindi version will follow.*"

A cursory glance at the circular too, alike the circulars of 1997, 2004, 2013 supra, does not reveal any discrimination meted out to the daughters widowed/divorced after the death of employee/pensioners or vis-à-vis those widowed/divorced before their death. Therefore, it would equally apply to such daughters who are widowed/divorced after the death of employee/family pensioner, as in the present case. The impugned clarificatory circular of 18.9.14 simply took away the rights that the circulars of 20.11.97, 30.8.04 and 11.9.13 bestowed upon these daughters way back in 1997, 2004 etc. which it legally could not.

16. In regard to correctness of order dt. 18.09.14 supra, issued contrary to the statutory or constitutional provisions as enumerated hereinabove it could be noted that in ***State of Orissa -vs.- Mamata Mohanty [2011(3) SCC 436]*** the Hon'ble Apex Court held as follows:

"It is a matter of common experience that a large number of orders/letters/circulars, issued by the State/statutory authorities, are filed in court for placing reliance and acting upon it. However, some of them are definitely found to be not in conformity with law. There may be certain such orders/circulars which are violative of the mandatory provisions of the Constitution of India. While dealing with such a situation, this Court in **Ram Ganesh Tripathi & Ors. v. State of U.P. & Ors., AIR 1997 SC 1446** came across with an illegal order passed by the statutory authority violating the provisions of Articles 14 and 16 of the Constitution. This Court simply brushed aside the same without placing any reliance on it observing as under:

"The said order was not challenged in the writ petition as it had not come to the notice of the appellants. It has been filed in this Court along with the counter affidavit.....This order is also deserved to be quashed as it is not consistent with the statutory rules. It appears to have been passed by the Government to oblige the respondents....."

(emphasis added)

17. Now, let us take a hypothetical situation where that an employee dies on 31.12.1985, his family pensioner widow dies on 01.01.1991, but his son who was not eligible as on 01.01.1991 gets permanently crippled on 02.01.1992 or any later date. Would he be considered eligible for family pension, or would be deprived of family pension on the ground

that he was not crippled as on the date of death of the employee or the family pensioner spouse, when the Railway Pension Rules specifically and inarguably entitles a disabled child to receive family pension for life. In my considered opinion, if such a person is debarred on the ground that he was not a disabled and hence not dependent son of the deceased as on his or family pensioner's death, the very purpose sought to be achieved by introducing provisions in favour of disabled child would be defeated. Such discrimination, on the basis of the date of incurring the disability, therefore in my considered opinion is unconstitutional and opposed to public policy.

In the same manner a widowed/divorced daughter should never be discriminated on the basis of the date of their widowhood/divorce. The consideration should be wholly on the basis of their financial condition.

18. In such view of the matter the impugned clarificatory circular letter dated 18.09.2014, which introduced the element of discrimination on the basis of date of widowhood/divorce as enumerated supra and is therefore unconstitutional and opposed to public policy, which would deserve to be quashed for the ends of justice, is to be ignored or simply brushed aside."

The operative portion of the order was as under :

"20. In such view of the matter the respondents are directed to consider the financial condition of the applicant to find out whether she is able to earn in terms of OM dated 30.8.04 and if not, to deem her as a dependent of the deceased employee for the purpose of extension of family pension.

21. The OA is accordingly disposed of. No order is passed as to costs."

6. The Railway Board on 13.10.06 introduced RBE 152/06 which clarified as under : (extracted hereinbelow with supplied emphasis for clarity)

"RBE No.152/2006

Bd's letter No. F[E]III/98/PN1/4 dated 13-10-06 (RBE No.152/2006)

Sub: Eligibility of divorced /widowed daughter for grant of Family Pension

Instructions were issued vide Board's letter of even number dated 16-03-2005, for grant of family pension to widowed/divorced daughters even after attaining the age of 25 years subject to fulfilment of all other conditions prescribed in the case of son/daughter. These instructions were based on the corresponding instructions issued by Department of Pension & Pensioners' Welfare [DOP&PW], nodal department of the Government on pensionary matters vide O.M. No. 1/19/03-P&PW[E] dated 25-08-04. The said instructions dated 25-08-04 were not clarificatory enough as regards entitlement to family pension in cases where divorce/widowhood takes place after attaining the age of 25 years. Pending receipt of clarification from DOP&PW, it was decided by the Board to insert a stipulation vide para 3(i) of Board's instructions dated 16-03-2005 to the effect that a divorced/widowed daughter shall be eligible for sanction of family pension provided the divorce with or death of her husband takes place before her attaining 25 years of age.

2. The matter has since been under consideration in Board's office in consultation with the DOP&PW and it has now been clarified by the DOP&PW that family pension is admissible to widowed/divorced daughters irrespective of the fact that the divorce/widowhood takes place after attaining the age of 25 years or before attaining that age, subject to other conditions being satisfied.

3. In view of the above clarification, para 3(i) of Board's letter of even no. of 16-03-2005 shall stand modified as under:

"(i) Family pension shall be admissible to divorced/widowed daughter from 25-08-2004 or from the date of divorce/widowhood or from the date on which her turn for family pension materializes, whichever is later."

7. The Railway Board's order supra does not differentiate, neither expressly nor impliedly, between daughters widowed/divorced during the lifetime of the employee or the family pensioner and those widowed/divorced after their death.

8. In the present case it could be noted that the applicant, the daughter of the deceased got widowed in 2011 when RBE 152/06 supra was operating in the field. Therefore inarguably and undoubtedly the Board's order would equally apply to the present applicant. She therefore, by virtue of RBE 152/06, already accrued a right to receive family pension as on the date she attained widowhood.

9. That apart, being identically circumstanced with the applicant in the OA 1194/15, extracted supra, for parity of reasons she would deserve the same

relief as extended to the applicant in OA 1194/15, i.e. if not earning, she would be entitled to be considered as dependent of her deceased father. The respondents have no where pleaded that the applicant has her own earning sufficient for her sustenance.

10. Accordingly the present OA is disposed of with a direction upon the respondents to deem her as a dependent of the deceased employee for the purpose of extension of family pension in accordance with the RBE 152/06 and pass appropriate orders by two months from the date of receipt of the copy of this order. No order is passed as to costs.

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(BIDISHA BANERJEE)
MEMBER (J)

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