



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, KOLKATA

CA. 1580/15

PARTICULARS OF THE APPLICANT:

Nirmala Pandey, Daughter of Late Nandalal Mishra, aged about 50 years, residing at 298, Bangur Avenue, Block - 'B', P.O. Bangur, Kolkata 700 005

.... APPLICANT

V E R S U S -

- I. The Union of India, through the Secretary, Indian Railways, Rail Bhawan, New Delhi 1
- II. The General Manager, Eastern Railway, Fairlie Place, Kolkata 700001
- III. Divisional Railway Manager, Eastern Railway, P.O. + P. S. - Howrah, District - Howrah. 7/1101
- IV. Senior Divisional Personnel Officer, Eastern Railway, P.O. + P. S. - Howrah, District - Howrah. 7/1101

.....RESPONDENTS

No. O.A. 350/01580/2015

Date of order: 23.11.2017

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

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. A.K. Banerjee, Counsel

ORDER (Oral)**Ms. Bidisha Banerjee, Judicial Member:**

This O.A. has been filed under Section 19 of the AT Act, 1985 seeking the following relief:-

"(i) Office Order No. E/16/Pen/Divwid/U.M. daughter dated 5.1.2015 issued by Divisional Railway Manager, Eastern Railway, Howrah cannot be tenable in the eye of law and therefore the same may be quashed.

(ii) An order do issue directing the respondents to continue family pension and pay arrears."

2. The order impugned in the present O.A. reads thus:-

"No. E/16/Pen/Div/Wid/U.M. daughter Howrah dated: 5/1/2015

Smt. Nirmala Pandey,
Widow D/o. Lt. Nand Lal Mishra,
Ex. BS/HWH, Under Sr. DCM/HWH,
298, Bangur Avenue Block 'B',
P.O. Bangur, P.S. - Lake Town,
Kolkata - 700 005.

You were granted family pension as per provisions laid down in Railway Board's letter No. F(E)/III/98/PN1/4 dated 13.10.2006 (RBE No. 152/2006), circulated under CPO/Eastern Railway's Sl. No. 143/06 dated 23.11.2006.

However, in terms of Railway Board's letter No. F(E)/III/2007/PN1/5 dated 30.9.2014 (RBE No. 109/2014), circulated under CPO/Eastern Railway's Sl. No. 125/2014, it has inter alia been clarified that "..... the family pension should discontinue in those cases where it had been sanctioned in pursuance of these O.M. but without taking 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.....".

Your case has been reviewed under the purview of Railway Board's aforesaid letter and it is found that your husband died on 17.1.2011 i.e. after the death of your parents, (father died on 23.1.1995 and mother died on 25.7.2003).

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Hence, you are not eligible for the said family pension. Accordingly, advice has been issued to Sr. DFM (Pen)/Eastern Railway/Howrah, the P.P.O. issuing authority, for taking necessary action at his end and to advise concerned disbursing authority for discontinuation of your family pension with effect from 30.9.2014.

This is for your information please.

For Divisional Railway Manager
Eastern Railway/Howrah

3. The O.M. dated 18th September, 2014, the circular on the basis of which the applicant was denied benefit is extracted verbatim hereinbelow for clarity:-

No. 1/13/09-P&PW(E)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Pension & Pensioners' Welfare
3rd Floor, Lok Nayak Bhawan,
Khan Market, New Delhi,
The 18th September, 2014

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 O.M. No. F(E)III/2007/PN1/5 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 O.M. dated 30.8.2004. 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 O.M. dated 28.4.2011, that the family pension may be granted to eligible widowed/divorced daughters with effect from 30.8.2004, in case the death of the Govt. Servant/pensioner occurred before his death.

3. It was further clarified vide O.M. dated 11th September, 2013 that if a daughter became divorcee/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 O.M. dated 25th/30th August, 2004 read with O.M. dated 28th April, 2011.

It implies that the family pension should discontinue in those cases where it had been sanctioned in pursuance of these O.M. but without taking 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).

(D.K. Solanki)

Under Secretary to the Govt. Of India"

4. Therefore, the sum and substance of the grievance of the present applicant is that her claim for compassionate appointment has been rejected on the ground that although she was a widowed daughter of Late Nandalal Mishra, she attained widowhood after the death of her parents.

5. Ld. Counsel for the applicant has placed reliance on an Office Memorandum dated 20.4.2011 issued by the Ministry of Personnel, Public Grievances and Pensions extending the scope of family pension to widow/divorced/unmarried and dependent disabled siblings of Central Government servant/pensioners clarifying the following position:-

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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 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.

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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. 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 servant/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/subordinates organizations for compliance."

6. Ld. Counsel would argue that although the widowed/divorced/unmarried daughters above the age of 25 years were entitled to family pension without any reservation, due to a subsequent clarification issued by the Ministry on 11.9.2013 the benefit that was bestowed upon such daughters, was sought to be withdrawn in case of widowed/divorced daughters, who got widowed and divorced, as the case would be, after the death of their parents. The illustration which became the basis of such withdrawal is as under:-

"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."

However, it was a clarification and it explicitly read that:

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

7. Ld. Counsel further submits that this Tribunal in the case of one Ratna Sarkar, a widowed daughter of a deceased employee had held as follows:-

"22.

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.

23. In such view of the matter, the impugned clarificatory circular letter dated 18.9.2014, 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.

24. In the aforesaid backdrop the speaking order is quashed and the respondents are directed to apply the circulars dated 30.9.04 and 11.9.13 supra to the present applicant to continue disbursing family pension to her treating her as a dependent daughter, with arrears to be released within two months from the date of communication of this order.

Accordingly, the O.A. would stand allowed. No costs."

8. Further the Hon'ble High Court at Calcutta in a Full Bench had ruled in favour of married daughters, who were left by their husbands in a case where a notification dated 2.4.2008 and 3.2.2009 of the State Government stood in the way of consideration of such daughters. The Hon'ble Court held as follows:-

"112. Our answer to the question formulated in paragraph 6 supra is that complete exclusion of married daughters like Purnima, Arpita and Kakali from the purview of compassionate appointment, meaning thereby that they are not covered by the definition of 'dependent' and ineligible to even apply, is not constitutionally valid.

113. Consequently, the offending provision in the notification dated April 2, 2008 (governing the cases of Arpita and Kakali) and February 3, 2009 (governing the case of Purnima) i.e. the adjective 'unmarried' before 'daughter' is struck down as violative of the Constitution. It, however, goes without saying that after the need for compassionate appointment is established in accordance with the laid down formula (which in itself is quite stringent), a daughter who is married on the date of death of the concerned Government employee while in service must succeed in her claim of being entirely dependent on the earning of her father/mother (Government employee) on the date of his/her death and agree to look after the other family members of the deceased, if the claim is to be considered further.

114. The exception taken by Mr. Majumdar to the ultimate direction in Purnima Das (supra) need not be dealt with since such direction is rendered redundant having regard to the findings that we have recorded."

9. Placing reliance on the said decision of the Full Bench, Ld. Counsel would argue that the present applicant, who stood on a better footing, being a widowed daughter, having no one to fall back upon, should be bestowed

with identical reliefs i.e. family pension ignoring the fact that she became a widow after the death of her parents.

10. Per contra, Ld. Counsel for the respondents vehemently opposing the claim would submit that the rejection was in order in view of the clarification and illustration at Para 5 of the O.M. dated 11.9.2013.

11. Ld. Counsels were heard and materials on record were perused.

12. Since a law has been laid down by the Full Bench of the Hon'ble High Court at Calcutta in case of married daughters, who are to be treated as dependent it is felt that the widowed and divorced daughters although widowed or divorced after the death of their parents, would be on a better footing, in my considered opinion the present applicant deserved a fresh consideration.

13. In such view of the matter the impugned order is quashed and the matter is remanded back to the authorities to consider the matter afresh in the light of the decisions cited (supra) and to pass appropriate orders within three months. For the purpose the applicant is directed to furnish copies of the cited decisions to the respondents within two weeks of the date of communication of this order.

14. The O.A. is disposed of accordingly. No costs.

(Bidisha Banerjee)
Judicial Member