

**NOTE : CLAIM FOR PENSION BY DIVORCED DAUGHTER WHICH
TOOK PLACE AFTER DEATH OF THE EMPLOYEE.**

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.**

ORIGINAL APPLICATION No. 821 OF 2016

Dated this Thursday, the 08th day of February, 2018

CORAM: HON'BLE SHRI ARVIND JAYRAM ROHEE, MEMBER (JUDICIAL)

Smt. Manju Sharma, Age – Adult,

C/o Shri Rajesh Sharma, Plot No.55, Datt Nagar,

A/P Ojhar, Tal Niphad, Dist. - Nashik,

Pin 422 206.

....Applicant

(By Advocate Shri P.K.Bohade)

VERSUS

1. The Union of India, Through the Secretary,

The office of the Controller General

of Defence Accounts, Ulan Batar Road,

Delhi Cantt. Pin 110 010.

2. The Principal C.D.A(P) Allahabad

(U.P.) Pin 211 014.

.. Respondents

(By Advocate Shri N.K.Rajpurohit)

OA filed on 20.10.2016

Order reserved on 05.02.2018

Order delivered on 08.02.2018

ORDER

The applicant, who claims to be divorced daughter of the deceased employee, who was serving with the respondents approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985

seeking the following reliefs :-

“8(a). This Hon'ble Tribunal be pleased to Hold and Declare that the Applicant is entitled for Family Pension and Hence she is entitled for the pensionary benefits and accordingly direct the Respondents to release the monthly pension to the Applicant.

(b) This Hon'ble Tribunal be pleased to redirect the Respondents to pay the Accumulated Pension W.E.F. July 2004 till date or atleast since date of Divorce and further direct the Respondents to pay the monthly pension to the Applicant Regularly.”

2. The applicant's father late Shri Rajendra Prasad was serving as Charge Mechanic under the respondent No.1. He expired on 31.10.1984 after rendering qualifying service and accordingly superannuation pension was sanctioned to him which he availed till his death. After his death, his widow (applicant's mother) was sanctioned family pension. She also passed away on 10.07.2004. However, prior to that the applicant got married on 17.04.2003 and thereafter, she started cohabiting with her husband. It is stated that unfortunately they could not maintain smooth relations and ultimately, applicant's husband deserted her. It is

stated that he had driven her out of house on 24.07.2003 i.e. within three months of the marriage but before death of applicant's mother. The applicant, therefore, started residing with her mother since then and thus, was dependent on her at the time of her death. Subsequently, the applicant filed a petition for divorce and secured a decree of divorce on 01.09.2012 from Civil Court Niphad District, Nashik in Hindu Marriage Application No.6/2011 under Section 13(1) (i) of Hindu Marriage Act, 1955 filed by her against her husband Sunil Vishwakarma.

3. Thereafter, the applicant made correspondence with the respondents for grant of family pension to her from the death of her mother. However, by the impugned order dated 03.08.2016, the request was rejected on the ground that she was not dependent on her mother at the time of her death and that the divorced petition was not pending before death of her mother. The same has been challenged in this OA on the following grounds :

“5(A). That the Response of the Respondents on the several representations of the Applicant is against Law and arbitrary.

(B). It is significant to note that the Applicants is a divorced daughter of Late Shri Rajendra Prasad who died on 31/10/1984 and was serving as “Charge Mechanic” trademan in G.E.(AF) Ojhar, Dist: Nashik (M.E.S.) and after his death his wife Smt. Saroj Sharma was getting the family pension and she expired on 10/7/2004. Therefore, naturally as the Applicant is divorced daughter of both of them is entitled to get the Family Pension.

(C) It is pertinent to note that the Respondents are unnecessarily denying family pension to the Applicant even though she is clearly eligible for the same as per clause 4 of the Office Memorandum dated 11/9/2013.

(D) Even otherwise also the case of the Applicant is squarely covered by the Ratio laid down by the Hon'ble Supreme Court in the case of D.S.Nakara Vs. Union of India and others.

(E) It is significant to note that the Applicant left her husbands house and since 24/7/2003 she is living a her parents house at the mercy of her parents, but after the death of her parents she has no source of Livelihood and also suffering from disease called 'Fibroids Tumer' for which she needs money on medicine also. Therefore factually she is entitled to get Family pension since the death of her mother i.e. since 10/7/2004.

(F) It is pertinent to note that the Applicant is clearly eligible to get the Family Pension from the Respondents as she has no source of income and to prove the same she has annexed her income certificate issued by the Competent Authority.

(G) Even otherwise also there are several Judgments of the Hon'ble Apex Court on issue of granting family pension to the Divorced wife which the Respondents unfortunately failed to consider before refusing Family Pension to the Applicant.”

4. On notice, the respondents appeared and by a common reply dated 06.07.2013 resisted the OA, in which all the adverse averments, contentions and grounds raised therein are denied. Reliance was placed on the DOPTs OM dated 11.09.2013 (Annexure A-2), which specifically states that 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 are entitled to get the family pension. Since the applicant secured divorced after death of her mother and no steps were taken for seven years after her alleged desertion by her husband. It cannot be said that she was dependent on her mother. As such, applicant is not entitled to family pension.

5. On 02.02.2018 and 05.02.2018, I have heard Shri P.K.Bohade, learned Advocate for the applicant and the reply arguments of Shri N.K.Rajpurohit, learned Advocate for the respondents.

6. I have carefully gone through the

pleadings of the parties and the documents relied upon by them in support of their rival contentions.

FINDINGS

7. The only controversy involved for resolution of this Tribunal in this OA is whether the impugned order rejecting the applicant's claim for family pension in any manner is illegal, improper or incorrect on the grounds stated by the applicant in the OA and hence, she is entitled to family pension.

8. So far as this aspect of the case is concerned, it is obvious that the applicant got married prior to death of her mother, who was getting the family pension on death of her husband. This being so, although it can be said that prior to her marriage which took place on 17.04.2003, the applicant was dependent on her mother, who was getting the family pension. However, on her marriage, her status has been changed from unmarried to married daughter and consequently, the liability to maintain her is also shifted from her

mother to her husband.

9. As stated earlier, it is obvious from perusal of the order passed by the Civil Court in a Petitioner for Divorce that she was deserted by her husband on 24.07.2003 and hence, she was required to take shelter of her mother, who was then alive and survived till 10.07.2004. There is nothing on record to show that after the applicant was deserted by her husband, she initiated any proceeding against him for seeking the maintenance allowance since he was primarily liable to maintain her. The learned Advocate for the applicant, in this respect submitted that many attempts were made for conciliation between the parties and to bring them together for cohabitation to save the marriage intuition. However, the attempts failed and ultimately after waiting for eight years, the applicant filed proceeding for divorce on the ground of desertion. However, admittedly this was much after the death of the applicant's mother. As such, there was change in her status from married daughter to divorced

daughter only after securing decree of divorce on 01.09.2012 and prior to that she continued to be the married daughter of the deceased employee.

10. In this respect, the learned Advocate for the applicant strongly placed reliance on DOPTs OM dated 25.08.2004 under the caption *“eligibility of divorced / widowed daughter for grant of family pension”* and submitted that after issuance of the said OM, the age limit for widowed/divorced daughter to claim family pension till they attain age of 25 years only has been removed, and hence, the applicant is entitled to get the family pension from the date of death of her mother since she was dependent on her at the time of her death. A reliance was also placed on subsequent DOPTs OM dated 11.09.2013 under the same caption *“eligibility of widowed / divorced daughter for grant of family pension – clarification regarding”*. He particularly referred the provisions of clause 4 of the said OM, which reads as under :-

*“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 11th September, 2013.*

OFFICE MEMORANDUM

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

1.
2.
3.
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.*

Sd/-

(D.K.Solanki)

*Under Secretary to the Government of India
Tel. No.24644632."*

11. It is, thus, obvious that even a divorced daughter is eligible to get family pension provided she was dependent on deceased employee / spouse getting family pension and she fulfills all other eligibility conditions at the time of death

of her parents.

12. As stated earlier, in the present case, the applicant ceased to be dependent on her mother after she got married on 17.04.2003. However, subsequently since deserted by her husband, she started residing at the shelter of her mother from 24.07.2003 while her marriage was still subsisting. As such, at that time, she was not the divorced daughter and hence, strictly speaking she cannot be said to be dependent on her mother at the time of latter's death on 10.07.2004. Further, it cannot be said that simply because she started residing at the shelter of her mother, she was wholly dependent on her, since for her survival she must have been doing some work for gain at least labourer or as domestic maid.

13. So far as this aspect of the case is concerned, the learned Advocate for the respondents has invited my attention to the provisions of Ministry of Defence letter No.1(9)/2013-D(Pen / Policy) dated 17.11.2017 under the caption "*eligibility of*

widowed / divorced daughter for grant of family pension – clarification regarding” and particularly clause Nos.3 and 4 thereof. The entire text of aforesaid letter is reproduced here for ready reference :-

*“No.1(9)/2013-D(Pen/Policy)
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare,
New Delhi 110 011.*

Dated 17th November, 2017

To

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

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

The undersigned is directed to state that the provision for grant of family pension to a widowed/divorced daughter beyond the age of 25 years has been made vide GoI, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners Welfare OM No.1/19/03-P&PW(E) dated 25.08.2004 circulated vide GoI MoD letter No.878/A/D(Pen/Sers)/04 dated 21.09.2004 applying the same provision to the Armed Force Personnel.

2. It was clarified vide Government of India, Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners Welfare OM No.1/13/09-PW(E) dated 11.09.2013 circulated vide MoD ID No.1(9)/2013/D(Pen/Pol) dated 16.09.2015, 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 come. Accordingly, divorced daughters who fulfill other conditions are eligible for family pension if a decree of divorce had been issued by the competent court during the life time of at least one of the parents.

3. Grievances were being received from various quarters that the divorce proceedings are a long drawn procedure which take many years before attaining finality. There are many cases in which the divorce proceedings of a daughter of Government employee/pensioner & spouse, but none of them was alive by the time the decree of divorce was granted by the competent authority.

4. The matter has been examined in this department and it has been decided that the clarification "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 fulfills all other conditions for grant of family pension. In such cases, the family pension will commence from the date of divorce" given by Government of India, Ministry of Personnel, P.G. & Pensions', Department of Pension & Pensioners Welfare vide OM No.1/13/09-P&PW(E) dated 19.07.2017 would also apply mutatis mutandis to divorced daughters of Armed Force personnel.

5. This issue with the concurrence of the Finance Division of this Ministry vide their ID No.10(09)/2015/Fin/Pen dated 17.10.2017.

6. Hindi version will follow.

Sd/-

(Manoj Sinha)

Under Secretary to the Govt. of India

Copy to :

As per standard distribution list."

14. The applicant's deceased father being Civilian employee under Ministry of Defence and was working with the respondent No.1, he is also governed by the said clarification. Further, so far as eligibility of divorced daughter to claim the family pension is concerned, it has been elaborately stated in DOPTs OM dated 11.09.2013, which was circulated vide Ministry of Defence letter dated 16.09.2015, to the effect that the divorced daughter, who fulfill other conditions are eligible for family pension if a proceeding for divorce had been filed in the Competent Court during the lifetime of at least one of the parents. This has been elaborately referred in clause 2 of the aforesaid Ministry of Defence communication dated 17.11.2017.

15. From the above discussion, it is obvious that being the married daughter, the applicant cannot be said to be dependent on her mother when she was deserted by her husband and while her mother was still alive. As such, after her

death on 10.07.2014, there is no question of considering the applicant's claim for grant of family pension since she continued to be married daughter. Perhaps for this reason, the claim for family pension was made only after she secured the decree of divorce on 01.09.2002 when her status was changed as divorced daughter of the deceased employee. However, as stated earlier in the DOPTs OM dated 11.09.2013, the petition for divorced should be filed prior to death of employee / family pension. Admittedly, it was filed after a period of seven years from death of mother. Hence, it cannot be said that she is eligible for getting the family pension. The position would have been different had the divorced petition been filed during lifetime of the applicant's mother, although it was finally decided after her death. The position is exactly reverse since the Petition for divorce has been filed after the death of her mother and naturally it was decided subsequently. As such, on both counts, the applicant is not

eligible to get the family pension, simply because she became the divorced daughter of the deceased employee from 01.09.2012.

16. During the course of arguments, the learned Advocate for the respondents has rightly pointed out that after death of her mother, the applicant could survive till filing of the Petition for divorce in the year 2011 and till this day. As such, it cannot be said that she was solely dependent on her mother at the time of latter's death.

17. Looking to the facts of the case through any angle, it cannot be said that the impugned order passed by the respondents rejecting the applicant's claim for family pension is in any manner illegal, improper or incorrect, which requires interference by this Tribunal by exercising the power of judicial review to set aside the same. As such, this Tribunal does not find any infirmity in the impugned order. This Tribunal cannot give any weightage to the submissions of the learned Advocate for the applicant that after

divorce, the applicant is residing alone and has developed tumor in her abdomen and hence needs immediate financial assistance. Although, it may be true but on this ground alone family pension cannot be granted to her out of sympathy, which has no relevance in legal parlance.

18. In the result, this Tribunal does not find any merit in the present OA. The OA, therefore, stands dismissed. The parties are, however, directed to bear their respective costs of this OA.

19. Registry is directed to send certified copy of this order to both the learned Advocates for the parties.

Place : Mumbai
Date : 08th February, 2018

(Arvind J. Rohee)
Member (Judicial)

*kmg**