CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.342/2015
Dated this the 15th day of June, 2017

CORAM:HON'BLE MS. B.BHAMATHI, MEMBER (A)

Smt. Aditi Vilas Mhatre
D/o. Late Shri. Vilas Mhatre
Ex- Sr. Telegraph Master
Central Telegraph Office BSNL
Mumbai 400001.
Residing at 6/61 BDD Chawl,
Shiwari Cross Road Shiwari (West)
Mumbai 400015.

...Applicant.

(**By Advocate Shri G.B. Kamdi**)

Versus.

1. Bharat Sanchar Nigam Ltd.
Through Chairman & Managing Director,
Bharat Sanchar Bhawan H C Mathur
Lane Janpath New Delhi 110001.

2. The Chief General Manager,
BSNL, Telecom Maharashtra Circle,
Admn Bldg. Juhu Road
Santacruz (W), Mumbai 400054.

3. The Union of India,
Through Secretary
M/o. Communication & IT
Sanchar Bhawan Ashoka Road,
New Delhi- 110001.

4. The Pr. Controller of Communication
Accounts, Maharashtra Telecom Circle,
BSNL Admn Building, C Wing, 3rd, Floor,
Santacruz (W) Mumbai 400054.

5. The Secretary,

Govt. of India M/o. Personal,
P.G. & Pensioners Welfare,
3rd floor, Lok Nayak Bhawan,
Khan Market New Delhi- 110003.

...Respondents.

(By Advocate Shri V.S. Masurkar)

Reserved on :- 02.05.2017
Pronounced on :- 15.06.2017.

O R D E R

Per:-Hon'ble Ms.B. Bhamathi, Member (A)

This OA has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

> "*(a) To allow the Original application.*
>
> *(b) This Hon'ble Tribunal may be pleased to call for record of the case and after going through its propriety and legality be pleased to quash and set aside the reply dated 03.12.2014 by which the claim of the applicant is rejected.*
>
> *(c) Direct the respondent to consider the claim of the applicant for family pension being a dependent and divorced daughter of the Pensioner as per OM dated 30.04.2004 and 28th April, 2011.*
>
> *(d) To pass any other just and appropriate orders this Hon'ble Tribunal may deem fit, proper and necessary if the facts and circumstances of the case.*
>
> *(e) The cost of this original application please be provided."*

2. The case of the applicant is that her father was working as Sr. Telegraph Master in the office of the Chief Supdt. Central Telegraph Office, BSNL Mumbai. He retired from service on superannuation on 30.11.2002. The Pension Payment Order (PPO) dated 27.11.2002 was issued by the competent authority and accordingly he was receiving the superannuation pension.

2.1. The father of the applicant expired on 22.03.2007, leaving behind one son and one unmarried daughter. The mother of the applicant pre-deceased her father on 21.02.2001. No other family member of the pensioner at the time of death of applicant's father was eligible for pension except the applicant. Thereafter, applicant's marriage was arranged and she did not claim the family pension after the death of her father even though she was entitled at that time because she was not married by them.

2.2. Applicant's name was Simantini Vilas Mhatre but the same was changed as Aditi which is published in Maharashtra Government Gazette issued for the period 11-17 March 2010 and from that date she is using the same name in all correspondence and official records.

2.3. Applicant was dependent on her deceased father, the pensioner and hence her father had obtained the medical facility for her in the name of Simantini and accordingly a medical card was issued on 19.06.2006 by the respondents' officer. Deceased father of the applicant nominated her along with his son for payment of pension arrears etc. vide form (A) Rule 5 dated 27.12.2001.

2.4. After the death of father applicant married on 11.07.2007. However, due to some marital disputes she came back to her parental/ natal home on 18.09.2008 and started living with her brother from that date. A legal notice dated 29.09.2009 was sent by her husband for divorce and the petition for divorce was filed on 02.11.2009, which was allowed vide order dated 18.01.2011. As per said order no maintenance allowance was allowed to her from her husband. She was dependent on the pensioner before marriage and continued to be dependent after her marriage because of the divorce. Election Identity Card dated 12.01.1995 had been issued and same is continued till date showing fact that she is residing at her parental/ natal home. Aadhaar Card shows address of her parental/ natal home. Name of the applicant also appears in the Ration Card.

2.5. As per DOPPW OM dated 27.10.1997 the dependent parents and widowed/ divorced daughter are also included in the definition of family from 01.01.1996 but the age limit of 25 years of age

was restricted. However, the said condition was removed vide GI. Dept. of Pen & P.W. OM dated 11.10.2006 wherein it was stated that the family pension to widow/ divorced daughter is admissible irrespective the fact that the divorce/widowhood takes place after attaining the age of 25 years. In other words the family pension will be admissible without age restriction subject to other conditions being satisfied. OM dated 22.06.2010 of DOPPW allowed the widow/ divorced daughter to intimate her name to pension sanctioning authority for inclusion, if the same was not intimated by pensioner or employee. The said relevant OMs were issued by the DoPPW under Rule 54 of CCS Pension Rules 1972.

2.6. As per DOPPW OM dated 28.04.2011 it was further clarified that the widowed/ divorced/unmarried daughter of Govt. Servant/ Pensioner will be eligible for family pension w.e.f. the date of issue of respective orders irrespective of the date of death of the Govt. Servant/Pensioner. Applicant is entitled for the family pension irrespective of the date of death of her father.

2.7. In view of the above the applicant submitted representation dated 26.06.2012 seeking pension sanctioning authority to pay family pension to her. R-4 without considering the factual position and ruling on the subject matter rejected the claim of the applicant and intimated that as per OM dated 11.09.2013 her case is not fit for sanctioning family pension to a divorced daughter because she did not fulfil the condition of dependent divorced daughter on the date of death of the pensioner as per para 4 of the OM dated 11.09.2013.

2.8. The said decision of R-4 was communicated by the Accounts Officer CTO Mumbai vide his letter dated 16.03.2015. It is also stated in the said letter that on the date of death of the pensioner applicant was not dependent on the pensioner as divorced daughter. There was a gap of more than three years between the date of death of pensioner and date of divorce of applicant.

2.9. In this connection, applicant has stated that there is no mention about 3 years condition in the said OM and hence the contention

of the respondents is without basis. Applicant was a dependent at the time of death of the applicant's father since no marriage had taken place. Further the said clarification was issued on 11.09.2013, whereas the applicant had claimed on 26.06.2012 i.e. the period of more than one year prior to issue of the said OM. Hence, the said clarification cannot be applicable in the present case. The applicant came to the parental home in the year 2008 only hence the question of 3 years for dependent does not arise. Further OM dated 11.09.2013 states in para 6 that this is only a clarification and the entitlement of widowed/ divorced daughter would continue to be determined in terms of OM dated 25/30.08.2004 read with OM dated 28.04.2011.

2.10. Due to wrong and illegal decision of the respondents and non consideration of the case of the applicant for grant of family pension, she has suffered from irreparable loss. It is a violation of the Article 31(1) of the Constitution of India as held by the Hon'ble Supreme Court of India in various cases that right to receive retirement benefit is property under Article 31(1) of the Constitution and by a mere executive order, state has no power to withhold the same.

2.11. The family pension scheme under the rules is designed to provide relief to widow and children by way of compensation for untimely death of the deceased employee as held by this Apex Court in ***Violet Issac V Union of India (1991) 1 SCR 282.***

2.12. As decided by Hon. Supreme Court in the case of ***Poonamal V Union of India (1985) 3 SCR 1042 & AIR 1985 SC 1196),*** Family Pension is also admissible as a matter of right.

2.13. Family Pension to a daughter unable to earn living due to mental disability, application for grant of pension made six year after death of the father, the Supreme Court held that delay is not fatal in ***Bhagwati Mamtani V Union of India (1995) Supp. 1 SCC 145.***

2.14. The Applicant now left with no source of income. The family Pension is a source of income for the dependent of the Govt. Hence, the Govt. of India being a welfare state has provided the family pension to meet the basic

needs for the dependent of the deceased Govt. servant. By rejecting the claim of the applicant the respondents have violated the object of the Govt. Policy. Hence, the action of the respondent is illegal, unconstitutional and bad in law.

3. In the affidavit in reply to the OA disputing the contentions of the applicant in the OA that the medical card was issued on 19.06.2006 by the respondents. At that time applicant was an unmarried daughter of the deceased railway employee not the widowed/ divorced daughter. Hence the applicant's name has been shown in the card at that time for medical purpose and not for family pension purpose. Applicant's father expired on 22.03.2007 and she was married on 11.07.2007 and divorced on 18.01.2011. Applicant herself admits that she became dependent w.e.f. 18.09.2008.

3.1. As per DoPT OM dated 11.09.2013 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. It is clear from the above that at the time of divorce of the applicant she was not a dependent on the pensioner or to his spouse. Therefore, the applicant's claim as dependent is hereby denied.

3.2. Residing at parental home is not an eligibility criteria for getting family pension, but dependency is a must for getting family pension, as family pension is only for dependents of the Government Servant/Pensioner or his/her spouse as prescribed under the rules.

3.3. Due to issue of OM dated 28.04.2011 and clarifications sought by the various ministries under the Union of India, being the nodal ministry, DOPPW vide OM dated 11.09.2013 has clarified the issue with examples similar to that of applicant. As per the said OM 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.

3.4. As already admitted by the applicant, due to death of her father his pension was discontinued as none of the family members

were eligible for family pension. It is very clear that at the time of death of the pensioner, none of the family members were eligible for family pension and accordingly none of the family members were dependent on pension/family pension. As per prevailing pension rules amended from time to time dependence on any of the parental relatives is not an entitlement for family pension, but family pension is payable to the children as they are considered to be dependent on the Government servant/pensioner or his/her spouse. In this case, following death of her father on 22.03.2007, applicant was residing with her brother who is not a family pensioner.

3.5. The claim of the applicant that as she was unmarried at the time of death of her father and did not claim the family pension at that time may be with malafide intention because for getting the family pension in the unmarried daughter category, she was required to be produce/submit the relevant documents with the respondents required under the CCS Pension Rules showing her eligibility for family pension such as financial as well as other status of the applicant at that time.

3.6. The contention of the applicant is also denied that the clarification OM was issued on 11.09.2013 whereas the applicant had claimed the family pension on 26.06.2012 because till the sanction of the family pension, the respondents department is required to follow the instructions/clarifications as issued by the nodal ministry from time to time. There are some administrative procedures required to be followed by the respondents while finalizing the pension/ family pension cases.

3.7. In view of the above, as per Rule 54 of CCS Pension Rules and clarifications dated 11.09.2013, applicant is not a dependent on pensioner/ Government Servant at the time of her divorce. The action was neither arbitrary nor delayed.

3.8. As regards the reliance of the applicant on the judgment of the Hon'ble Supreme Court in **Violet Issac (supra),** it is submitted that the same pertain to the right to receive retirement

benefit and not for getting family pension. The respondents have already released the retirement benefit to the applicant well in time and the pension was also released to him. Hence, the reliance on the said case is not relevant in support of her case.

3.9. As regards the judgment relied upon by the applicant in case of ***Bhagwati Mamtani V Union of India (Supra),*** it is stated that the grant of family pension to son or daughter of a Government Servant suffering from disability. Thus the said judgment is not applicable in this case and in fact irrelevant to the facts and circumstances of the present case.

4. In the rejoinder filed by the applicant, it is submitted that the contention of the respondents that OA is delayed and suffers from delay and latches is not tenable since the respondents have decided the representation and communicated the decision vide letter dated 03.12.2014 after exhausting the departmental remedy, the applicant has filed the present OA on 08.06.2015 and hence the OA is within the limitation period. Further for pensionary benefit the cause of action is continuous and hence the ground of delay taken by respondents to dismiss the OA is not maintainable.

4.1. The respondents' contention about medical card is not correct since the medical facilities have continued even after marriage the applicant was residing at parental house as she came back in very short period.

4.2. Further the contention of the respondents about her claim as dependent is not tenable, because the circular dated 11.09.2013 has no manner of application in the facts of the present case since the applicant put forward her claim for family pension in the year 2012 i.e. on 26.06.2012, when the aforesaid circular had no existence. As per OM dated 11.10.2006 the family pension to widow/ divorced daughter is admissible irrespective of the fact that divorce/ widowhood take place after attaining the age of 25 years or before in other words the family pension will be admissible without age restriction. The contention of the respondents about dependency on pensioner is not correct since the applicant after divorce

become dependent on parental house. The contention of the respondent about OM dated 11.09.2013 is not tenable since said circular was not in existence on the date of claim of family pension.

5. In the Sur-rejoinder filed by the respondents, it is stated that regarding medical card made on 19.06.2006, no records are available regarding marriage or divorce of applicant and hence no comment can be offered as per the additional affidavit filed by the respondents. In the DOPPW OM dated 12.10.2009, it has been clarified that the daughter of Government servant, who is married and not dependent on her father when he was alive, is not eligible to receive the family pension later on after death of her husband. In the event of the two or more such daughters, the family pension is shared among both the claimants.

6. The Tribunal has gone through the O.A. alongwith Annexures A-1 to A-13 and rejoinder filed by the applicant.

7. The Tribunal has gone through the Reply of Respondents along with Annexure R-1 and R-2, Sur Rejoinder filed on behalf of the respondents and the original records filed on the direction of this Tribunal.

8. Heard the learned counsel for the applicant and the learned counsel for the respondents and carefully considered the facts, circumstances, law points and rival contentions in the case.

9. The main issue for consideration in adjudicating this OA is whether applicant, whose dependency on pensioner at the time of his death, as unmarried daughter got restored after divorce i.e. three years after the death of the pensioner. Secondly, whether dependence on natal home after divorce is equivalent to dependence on deceased pensioner. Thirdly, whether law provides that severance from family due to marriage, is irrevocable and whether staying with natal family following divorce, after death of pensioner and his wife means that divorced daughter is still part of 'family' as defined under Rule 54 of CCS (Pension) Rules, 1972. Finally, whether the OA is hit by delay and laches.

10. Some of the admitted/undisputed/implied and

therefore undisputable facts of the case must be noted. The mother of the applicant predeceased her pensioner father on 21.2.2001. The pensioner retired on 30.11.2002 and died on 22.3.2007. Following death of his wife, pensioner nominated applicant and her younger brother for pension. Applicant was born on 28.09.1974. She was 33 years in 2007. On 11.07.2007, her marriage took place after her father's death in March 2007. Her younger brother was born on 18.09.1982. He was less than 25 years of age on the date of death of his father. He became 25 years on 18.09.2007 i.e. two months after applicant's marriage. There is no dispute in the family regarding her claim for family pension.

11. On 18.09.2008 she returned to her natal home i.e. to her brother after one year and two months of married life since her marriage was not working out. However, it was her husband who filed a divorce petition on 2.11.2009. A legal notice was issued on the applicant on 29.09.2009. In the order of Civil Judge, HMP No.120/2009 decided on 18.1.2011, it is clearly recorded that there was no consent from the present applicant in filing the divorce petition nor had the applicant allowed filing. However, the order allowing the divorce was passed in the presence of advocates representing both the parties, although no contention from the side of present applicant is on record in the order denying or disputing the contentions of divorce petition. The applicant has not challenged the said order, thereafter. The applicant has also not filed any petition for maintenance, thereafter. But, as per law, right to seek maintenance survives till date.

12. The sequence/history of relevant DOPT instructions on family pension are as follows:-

> "(a). Under the Central Civil Services (Pension) Rules, 1972 family pension is payable to the family of the deceased employee/pensioner. Before 1998, family for this purpose constituted only the spouse and dependent children of the employees/pensioner. In 1998, <u>dependent</u> parents and dependent widowed/divorced daughters below the age of 25 years or up to the date of their re-marriage whichever is earlier, were also included in the definition of family.

(b). In 2004, vide DOPPW OM dated 25.08/2004. Family pension had been allowed to dependent divorced/widowed daughter even after she attained the age of 25 years.

(c). Subsequently, it was clarified vide DOPPW OM dated 11th October, 2006 that family pension was admissible to dependent eligible widowed/divorced daughter even if she became widow/ divorcee after attaining the age of 25 years.

(d). It was further clarified vide DOPPW OM dated 28th April, 2011 that subject to fulfilment of other conditions laid down therein, the dependent widowed/divorced daughter of a Government servant/pensioner will be eligible for family pension with effect from 25th August, 2004 irrespective of the date of death of employee/pensioner. The term irrespective of date of death' was vis-à-vis the OM of 25th August, 2004, i.e., whether the employee/pensioner died before or after 25th August, 2004. Family pension was admissible to their widowed/divorced daughters who fulfilled other conditions and were therefore eligible for family pension. It did not make a daughter of an employee/pensioner eligible for family pensioner who became a widow/divorcee after the death of her parents. Divorce/widowhood is a precondition of eligibility for family pension under the Central Civil Services (Pension) Rules, 1972.

(e). It was again clarified vide DOPPW OM dated 11th September, 2013 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 of 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 al eligibility conditions at the time of death/ineligibility of her parents and on the date her turn to receive family pension comes. A daughter who is leading a married life at the time of death of her parents does not fulfil the condition of widowhood/divorce attached to the grant of family pension. It was added that 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."

13. Applying the above circulars issued by DOPPW (R-5) the nodal respondent, specifically to the case of applicant, the respondents have accepted the said view in the present OA to reject the case of applicant. The view of DOPPW, in the light of the circulars, reads as follows:-

"3. It is seen that the father of the applicant died on 22.3.2007. Her mother had passed away in 2001. She is stated to have married on 11.7.2007. Her husband filed a divorce petition in 2009, which was allowed in 2011.

4. It is seen that the administrative department has treated the case as one involving instructions on payment of family pension to widowed/divorced daughters only. In fact, at the time of death of her father, she was unmarried. However, at that time unmarried daughters above the age of 25 years were not eligible for family pension. Nevertheless, by application of this department's O.M., dated 6th September, 2007, she is to be considered as eligible for family pension as an unmarried daughter at the time of death of her father. When she married, she no

longer remained eligible for family pension. She remained eligible for family pension till she married on 11th July, 2007. However, no arrears are payable to her for this period as the financial benefits in previous cases were allowed to accrue only w.e.f. 6th September, 2007. By this date she was not eligible for family pension.....

5. The applicant was dependent on her father at the time of his death. However, she married thereafter and no longer remained eligible for family pension. Secondly, after her marriage she became dependent on her husband and became a part of her husband's family. As such, after her marriage, she no longer remained a 'member of family of her father for the purpose of family pension as defined in rule 54 (14) of the CCS (Pension) Rules, 1972.

6. After her divorce, she claimed for family pension stating that she was eligible for it at the time of his father's death and again became eligible after her divorce. She would have been eligible for family pension as of now if she had remained unmarried all along. However, as a divorced daughter, she cannot claim to become dependent on her father owing to her divorce as he was not alive at the time of her divorce and no one can become dependent on a dead person. Similarly, family of the pensioner for the purpose of family pension was one that he was having at the time of his death. He cannot acquire a member in his family after his death owing to an event that took place after his death. In order to be eligible for family pension as a divorced daughter, one has to be eligible to become member of her father's family on the date of divorce. If the father has died earlier, one cannot become member of family of her father after her divorce. Therefore, in terms of instructions of the Government, read with this department's clarification contained in O.M. No. l/l3/09-P&PW (E), dated 11.9.2013, she was not a member of family of her father as per the definition of family as given in

sub-rule (14) of Rule 54 of CCS (Pension) Rules, 1972 and was not eligible for family pension as a divorced daughter at the time of her divorce.

7. In para 14 of the reply, it needs to be added that the Government had already made it clear well before in 2009, vide Department of Pension & Pensioners' Welfare OM No. 1/02/09-P&PW(E), dated 12th October, 2009 to Ministry of Commerce & Industry, Department of Industrial Policy and Promotion that the daughter of-the Government servant who was married and not dependent on her father when he 'was alive was not eligible to receive family pension later on after death of her husband. Therefore, the intention of the Government cannot be said to be mala fide."

14. It is true that applicant was dependent on pensioner as unmarried daughter till the death of pensioner. The period of dependency was from April 2007 to July 2007, when she got married. For arguments sake, had she sought for family pension and was granted the same, on her father's death, because she was eligible, the family pension would have stopped on the date of her marriage, as her dependency switched over to her husband. By marriage, she severed and switched her membership from family and in the light of Rule 54 (14) of CCS Pension Rules she was no more a member of the family. This situation was irreversible i.e. by marriage followed by divorce she could not become a member of the family or be treated as dependent divorced daughter after the death of the applicant in 2007. The circulars have no application to cases of such ceased family membership because of divorce after the death of pensioner. Hence, although she was dependent/unmarried daughter of pensioner at the time of death of pensioner, she was not divorced/dependent at the time of pensioner's death. Dependency as dependant unmarried daughter could also not legally continue after marriage. Hence, question of resumption dependency on divorce does not arise.

15. It is immaterial and even superfluous to discuss whether the Circulars/clarifications came before or death applicant applied in 2012 or

between 2011 to 2013. The fundamental issue of dependency on pensioner at the time of death was embedded to the Rules and that was the prime underlying eligibility condition that continued in all the instructions, even though age restriction got gradually removed.

16. It is also possible that applicant fulfills the income criteria, since she claims to have zero income. Nothing also has come to her by way of maintenance as she did not claim maintenance after divorce. It is also true that she is covered by the later circulars as regards age relaxation and on age criteria her case cannot be rejected. But the basic criteria of eligibility is dependency on pensioner at the time of pensioner's death, as divorced daughter. Applicant got married only after her father's death. The dependency factor as unmarried daughter is distinct from dependency based on divorce at the time of death of pensioner. The two are parallel provisions, independent of one another. But sequentially her period of dependency at the time of death of father, as unmarried daughter, was taken over by non dependency on account of marriage, by which the nexus with the brief period of dependency, as unmarried daughter, got irrevocably extinguished as she ceased to be member of the family as defined in the Rules.

17. Summing up, dependency as unmarried daughter having got replaced by non dependency due to marriage, subsequent divorce has no place in the eyes of law for considering grant of family pension, since she does not fulfil the condition of being a divorced daughter and therefore dependent on pensioner on the date of his death. Secondly, after marriage, and following pensioners death, she got excluded from the dependency of family as per Rule 54 (14) and divorce cannot restore her position as family member and thereby no legal right accrues permitting to treat her as divorced daughter, as per rules. She may have returned to her natal home, physically, and might financially and or otherwise totally dependent on her brother. (she was fortunate that she is not deserted by her natal home and left to fend for herself) But, dependence on brother, who is not a pensioner, is not equal to dependence on a pensioner, who is no more alive. Hence her

dependence cannot be treated to be continuing after his return to her natal home, as per law.

18. During the course of oral arguments, applicant has relied on a judgment of the **Hon'ble Calcutta High Court in W.P.C.T. No.37 of 2013 Smt. B. Malika vs. UOI & Others** decided on 13.05.2015. The Court set aside the order of the Tribunal and held as follows:-

> " The petitioner herein is claiming family pension being a daughter of the deceased employee who was subsequently divorced.
>
> Mr. Chakraborty, learned advocate representing the petitioner submits that in terms of Railway Board's Order No.98/2008 the said petitioner is entitled to receive family pension.
>
> The relevant extracts from the aforesaid Railway Board's Circular are reproduced hereinbelow :
>
> Subject: Eligibility of divorced/widowed daughter for grant of family pension Clarification regarding.
>
> [No. F(E)III/2007/PN1/5, dated 20.8.2008]
>
> Instructions were issued vide Board's letters No.F(E)III/98/PN1/4, dated 16.3.2005, (Bahri's 44/2005,p-63) and 13.10.2006 (Bahri's 152/2006, p-191) extending the scope of family pension to widowed/divorced daughter beyond 25 years of age subject to fulfilment of all other conditions prescribed in the case of son/daughter. A few references have been received from different Railways seeking clarification on certain issues related to these instructions, which have been examined in consultation with Department of Pension and Pensioners' Welfare and it is clarified as under :

Sl.No.	Issue Raised	Clarification

(i)	Whether a daughter who is divorced/attains widowhood at any age is eligible for family pension (e.g. at the age of 60,70…)?	Yes; a widowed/divorced daughter shall be eligible for family pension irrespective of her age at the time of becoming widow/divorcee subject to fulfilment of certain conditions, including the income criterion, as stipulated in the relevant provisions of the Railway Services (Pension) Rules, 1993 and the orders issued thereunder.

Learned advocate of the railway authorities however, relies on an office memorandum mentioned in Estt. Srl. No. 2/2014 dated 8th January, 2014 and submits that those married daughters who became widow and divorcee before the death of both of her parents and were dependent on them at the time of their death are eligible for family pension.

Learned advocate of the petitioner submits that the aforesaid Railway Board's Circular dated 8th January, 2014 has no manner of application in the facts of the present case since the petitioner herein put forward her claim for family pension in the year 2011 when the aforesaid circular had no existence.

Learned advocate of the petitioner also submits that the said petitioner was dependent on the mother and was staying with her mother during her lifetime which has been specifically recorded by the learned Additional District Judge, 5th Court, Paschim Medinipur in Mat Suit No. 787 of 2009.

Be that as it may, the petitioner herein being the divorced daughter of the deceased employee shall be eligible for family pension in terms of the Railway Board's Order being RBE 98 of 2008 wherein it has been specifically mentioned that a

> divorced daughter is eligible for family pension at any age and no other condition has been mentioned by the Railway Board in the aforesaid order although it is not in dispute that the said petitioner was staying with her mother as dependent till her death.
>
> For the aforementioned reasons, we direct the respondent authorities to take appropriate decision for grant of family pension to the petitioner herein as the divorced daughter of the deceased employee in terms of the RBE 98 of 2008 who was also admittedly staying with her mother till death, without any further delay but positively within four weeks from the date of communication of this order.
>
> With the aforesaid directions, we set aside the impugned order passed by the learned Tribunal and dispose of this writ petition without awarding any costs."

19. In this connection, the contention of the respondents is that this is not a reported judgment and not pleaded in OA or rejoinder. Also, a question is raised by respondents whether DOPPW instructions on family pension adopted by BSNL is pari materia to RBE circular of 98/2008.

20. In this connection, whether it is Railways or BSNL or DOPPW all have their common source of rule position in the CCS (Pension) Rules 1972 framed under Article governing the entire Central Government and BSNL, which is a CPSU. It only appears from the extracted portion of RBE Circular 98/2008, that its provisions are different from that of DOPT circulars. However, from a perusal of the order of the Hon'ble High Court of Kolkatta the full facts are not evident to establish that the facts are similar to the facts in this OA. It was incumbent upon the learned counsel for applicant to have placed before the Tribunal, the full facts of the case by way of affidavit and to establish that the facts and circumstances in the writ petition is similar to the facts and circumstances in this present OA.

21. It also appears from the present OA record that certain matters pertaining to Railways come up before DOPPW where family pension was discontinued to applicants in a group of OAs before CAT Jaipur Bench wherein without taking

into consideration that the divorced/widowed daughters, who were leading a married life at the time of death of pensioner/his or her spouse, whichever is later, family pension have been granted. The DOPPW issued circular of 25/30.08.2014 holding that "a daughter who became divorced/widowed shall be eligible for family pension even after attaining the age of 25 years subject to fulfilment of other conditions, which should take effect from 25.08.2004". In response to a query from the Railways DOPPW vide OM dt.18.9.2014, directed discontinuing of family pension in all these cases, as the applicants' did not fulfil the condition of dependency to get family pension as widowed/divorced daughters in terms of OM of 25.8.2004. Hence, while decisions were taken and implemented to discontinue their family pension, no arrears were recovered as per DOPPW advise.

22. The stand of the DOPPW in the cases before the CAT Jaipur Bench summarized at page-68 of the present OA reads as follows:-

> "7(f). It is stated that the action of the Government is neither arbitrary nor discriminatory. Family pension is allowed to the children on the premise that they are dependent on their parents-Government servant as well and his/her spouse. Dependence of divorced/widowed daughters on their parents has been the key factor in granting this benefit to them beyond the age of 25 years. A married daughter cannot be considered as dependent on her parents and, therefore, family pension cannot be granted to her on the death of her parents. The family pension as sanctioned to the applicants in all these cases on 19.9.2011 or after that, whereas, the Government had made it clear well before in 2009, vide Department of Pension and Pensioners' Welfare Office Memorandum No.1/02/09-P&PW(E), dated 12th October, 2009, to Ministry of Commerce and Industry, Department of Industrial Policy and Promotion that the daughter of the Government servant who was married and not dependent on her father when he was alive was not eligible to receive family pension later on after death of her husband. Therefore, the intention of the Government cannot be said to be malafide.

8(a). .....

8(b). .....

8(c). The Government did not impose any new conditions after making the policy for grant of family pension to the widowed/divorced daughters of the deceased employees/pensioners of the Central Government in 2004. The Government only clarified the policy whenever a difficulty in its interpretation arose. As such, the Government is within its rights in imposing reasonable restrictions on its grant only to widowed or divorced daughters, as was done at the time of issue of instructions in August, 2004 and also in clarifying these restrictions subsequently as was done in 2006, 2009, 2011, 2013 and 2014. It is emphasised that there is no alternation in the conditions for grant of family pension to the divorced/widowed daughters of deceased Government servants/pensions, as communicated for the first time in 2004. The Government, by issuing Office Memorandum, dated 18th September, 2014 has only clarified the situation arising out of misinterpretation of rules.

(d). It is not correct on the part of the applicants to state that they were in receipt of family pension for a decade. They were granted family pension on 19.9.2011 or after that. It was arrears for the period from 25.8.2014 that was paid to them after sanction of family pension on the dates indicated in the statement of facts.

(e). It was never the intention of the Government that every daughter who gets divorced or widowed should be granted family pension of father/mother who might have passed away 20 years ago. Therefore, the clarification, dated 11th September, 2013 states that the claim of such a daughter is acceptable if she is a widow or a divorcee and dependent on her last surviving parent at the time of his/her death and not leading a married life.

Accordingly, a divorced/widowed daughter has been held eligible in old and closed cases if she had become a divorcee/widow during the period when the pension/family pension was payable to her father/mother, apart from fulfilment of other conditions.

(f). In OA.No.350/00495/2015 filed by Smt. Anjana Roy in Kolkata Bench of CAT, Ministry of Railways has included the following:

> "The apex court's judgment in Ajoy Hasia V Khalid Merjib Sehravardi (stated herein as Ajoy Hasia Khalif & Ors) 1980 (3) SLR 467 mainly dealt with Article 309, 310 and 311 is not attracted in this application since there is no arbitrariness in Department of Pension and Pensioners' Welfare office memorandum, dated 18.09.2014 which only restored the equality between the applicant and others who have been denied or would be denied family pension in future in terms of the instructions issued by the Government. Thus the issue that came up for consideration before the Hon'ble Tribunal is entirely different and therefore the said judgment of the Hon'ble Supreme Court has no bearing on the facts and question of law raised in present application. The deponent further states that when a provision is challenged as violative of Article 14 it is necessary to ascertain the policy underlying the statute and the object intended to be achieved by it and the court is to see whether classification is rational and based upon intelligible differentia. The power to make classification can be exercised not only by legislature but also by the administrative bodies acting under Act as observed by Supreme Court in K.R. Lakshman vs.

Karnataka Electricity Board (AIR 2001 (1) SCC 442)."

23. It appears that similar matter of Railways that came up before Jaipur Bench, also came up before Ernakulum Bench decided on 12.07.2016 by a common order in a group of **OAs 41,47,06 and 32 of 2014 and 01,13 and 332 of 2015.** This order discusses the circulars relied upon in dealing with the cases before the Jaipur Bench of the Tribunal.

24. For the sake of convenience the findings of the Ernakulum Bench of the Tribunal from para-10-22 is reproduced as below:-

> "10. Family pension to the dependents of the deceased Railway servants is governed by Railway Services (Pension) Rules, 1993. We are dealing with the Railway Services (Pension) Rules, 1993 as amended in 2013 (hereafter referred to as Pension rules 1993). The Family Pension Scheme for Railway Servants, 1964 has been incorporated as Rule 75 in the 1993 Pension Rules. In the amended rule 75 the term 'Family' has been given the meaning as follows:
>
> '(i) wife in the case of a male railway servant or husband .....
>
> (ii) a judicially separated wife or husband .....
>
> (iii) 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'
>
> 11. Clause (iii) of sub rule (6) of Rule 75 deals with grant of family pension to unmarried or widowed or divorced daughters as follows:
>
> '(iii) subject to second and third provisos, in the case of an unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier.'
>
> The second proviso to sub rule (6) reads :

'Provided 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:-

(a) .....

(b) .....

Explanation 1.- An unmarried son or an unmarried or widowed or divorced daughter, except a disabled son or daughter 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 her re-marriage or by the disabled son or daughter or 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.

Explanation 5 - .....

Explanation 6.- .....

Explanation 7.- .....

12. Learned counsel for the applicant Ms. Kala T. Gopi submitted that the impugned orders Annexures A3 & A4 have been issued by the authorities in violation of the above quoted provisions of the Railway Services (Pension) Rules, 1993 which is the statutory rule having the status of a Rule framed under the proviso to Article 309 of the Constitution of India and therefore any deviation from the statutory rules by way of the administrative instructions in the aforesaid Annexure A4 OM is ultra vires the 1993 pension rules and hence the impugned orders require to be quashed and set aside.

13. Learned Senior Advocate Mrs. Sumathi Dandapani, referring to Annexure A5 OM issued by the Department of Pension and Pensioners Welfare, submitted that the Department of Pension and Pensioners Welfare of Government of India had relaxed the eligibility of widow/divorcee daughters in the matter of grant of family pension by doing away with their age limit of 25 years and the requirement that they have to go back to the parental home for becoming eligible to the family pension. She submitted that Annexure A4 OM has been issued by the Government of India, in continuation of Annexure A5 OM wherein, the requirement that the widowed/divorced daughter should have had such status during the life time of the father/mother- whoever died later - for the purpose of becoming eligible for family pension, was provided. Learned Senior Advocate submitted that the Government of India decision in Annexure A5 was followed by the Railway Board in Annexures A6 and A7 letters of Railway Board. She submitted that dependency of widowed/divorced daughter on her father/mother who were the Railway pensioners is an important factor which is discernible even in the pension rules of 1993, amended from time to time. She submitted that a look at the aforequoted provisions in the pension rules reveal that earning an income of her own dis-entitles a divorced/widowed daughter from getting family pension if such income from other sources is equal to or more than the minimum family pension

and dearness relief admissible thereon. The learned counsel has also submitted that since own income is an important factor for dis-entitling the widowed/divorced daughters from claiming family pension, dependency of such daughters on their parents forms an important consideration for determining their eligibility for family pension. We find some force in that argument because even though the aforequoted provisions of the pension rules do not specifically mention that the widowed/divorced daughter should be dependent on the parents for claiming family pension, exclusion of the daughters who have earnings of their own for their livelihood does indicate that the dependency on the parents is a strong factor which make the widowed/divorced daughters eligible for family pension. Therefore, the necessary concomitant situation in these cases is that in order to claim family pension, such daughters of the Railway pensioners ought to have had the status of widow/divorcee during the life time of their parent/s (father/mother) who was the Railway pensioner and was dependant on such pensioner for her livelihood. We are of the view that it is this dependency which if persists even after the death of the parent, that makes the widowed/divorced daughters to yearn for the family pension for their future sustenance.

14. It was argued by the learned counsel for the applicant that family pension is a socio-economic measure for protecting the livelihood of hapless women who in our society are not taken care of by their relatives on becoming widows/divorcee. **However, if one examines the background of each of the applicants in these cases it can be seen that they became widow/divorcee only after the death of their parents who were Railway pensioners. Many of the applicants became widows long after the death of their parents. Therefore, unless some restriction is imposed by emphasising on the dependency factor, there is a possibility that the grant of family pension will denigrate to the status of a**

hereditary right which will be antithetical to the equality clauses in Arts.14 and 16 of our Constitution. Family pension is a socio-economic measure to give public assistance to the really needy widows/divorcees from being subjected to 'undeserved wants' as envisaged in Art.41 of the Constitution. In the case of applicant No. 1 in OA No. 1047 of 2014, as could be seen from Annexure R1(a) application submitted by her to the Railway authorities for family pension, her father who was a Railway pensioner died in 1989 and she became a widow only in 2010. She has also candidly stated in the Annexure R1(a) application that she is dependent on her son Appu Swamy. One fails to understand how in such situations one can rely the provisions of the 1993 pension rules for grant of family pension in an unbridled manner, without proving that she was a widow who was totally dependent on the deceased railway pensioner before his death and that her continued sustenance requires the family pension received by her father with which he had been supporting her till his death. It was with a view to put a reasonable restriction on the misuse of the facility of family pension, Government of India through the Department of Pension & Pensioners Welfare has issued Annexure A4 OM which has been rightly followed by the Railway Board also.

15. In Annexure A4 we are unable to see any act which can be termed as ultra vires the statutory pension rules. On the other hand we are of the considered view that Annexure A4 OM is only facilitating the proper implementation of the provisions of family pension contained in 1993 pension rules and is intended to avoid the misuse of the facility by all the widow/divorced daughters of the deceased Railway pensioners without considering the factor of their dependency on the pensioners when they were alive. It is easily discernible in the case of other dependents like unmarried daughters, disabled persons and mentally retarded

persons that such persons are the real dependents of the pensioners and that are persons who cannot afford to have the livelihood option of their own. Similarly, in the case of the parents of the pensioners who are alive at the time of the death of the pensioner it has been made clear that they are eligible for family pension only if they were totally dependent on the Railway pensioner during his life time.

16. **Therefore, we are of the view that the omission to include the factor of dependency of the widowed/divorced daughters on the parent pensioner during his/her life time in the 1993 pension rules is immaterial and that Annexure A4 OM is not de hors but is only interpretative in nature, in consonance with the object of the family pension scheme in rule 75 of the pension rules of 1993. We hold that the condition mentioned in Annexure A/4 OM is already inherent in Rule 75 as amended in 2013. Annexure A/4 is an administrative instruction interpreting and bringing out the true import of the family pension for the widowed/divorced daughters. It is indeed a purposive interpretation of the rule for such daughters in order to ensure the real purpose of extension of family pension to the widowed/ divorced daughters and to bring in more equality among the most deserving persons for such financial help, rather than treating them unequally with other dependents like unmarried daughters. As observed above, it is perceivable in Rule 75 itself that dependency is indeed a material factor for grant of family pension to members of the family other than the spouse of the pensioner.**

17. Shri Govindaswamy learned counsel for the applicants submitted that Annexure A4 is violative of the principles enunciated in Section 21 of the General Clauses Act, 1987. It reads:

'21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.

> - Where, by any (Central Act) or Regulations a power to (issue notifications), orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any (notifications,) orders, rules or bye-laws so (issued).
>
> True, executive orders or administrative instructions cease to have legal efficacy at the moment they are contrary to their superiors i.e. Constitution, a Statute or any delegated legislations in the form of rules or regulations.
>
> This is often referred to as 'domenian paramountency' [see Pradeep Kumar Maity v. Chinmoy Kumar Bhunia (2013) 11 SCC 122]. It is also well settled position that effect of clarificatory Government orders can by no means is to supersede or override the statutory material or other orders which they seek to clarify. As observed earlier, what Annexure A4 OM seeks to clarify is already inherent and is discernible in the provisions of Rule 75 of 1993 Pension Rules as amended in 2013. It can be seen that Annexure A4 OM was not issued to add, amend, vary, rescind any of the rights conferred under Rule 75 of the 1993 Pension Rules, as amended in 2013 in favour of the widowed/divorced daughters of the pensioner. [The Apex Court's decision in State of Jharkhand v. Pakur Jagran Manch - (2011) 2 SCC 591 explains how a Government order would not tantamount to add, amend, vary or rescind any of the orders or rules passed earlier]. Therefore, we are of the view that Section 21 General Clauses Act, 1987 has no application to Annexure A4 OM.
>
> 18. .....
>
> 19. We, therefore, hold that Annexure A4 and the impugned orders are not ultra vires the rules. We do not find any unconstitutionality or violation of any constitutional limitations in the impugned orders."

25. The said order was challenged by applicant in the one of the 6 OAs before this Tribunal i.e.

OA.1106/2014 before the Hon'ble High Court of Kerala at Ernakulum in **OP (CAT) No.206 of 2016 delivered on 29.7.2016.** The prayer was for setting aside the order of the Tribunal and resuming disbursement of family pension. Dismissing the WP, the Hon'ble High Court held as follows:-

> "9. The family pension to the dependents of the deceased Railway servants is governed by the Railway Services (Pension) Rules, 1993. Rule 75 of the said Rules deals with Family Pension Scheme for Railway Servants, 1964. Subject to the provisions contained in Rule 75, an unmarried/widowed/divorced daughter of a deceased Railway servant is entitled for payment of family pension. By Annexure A5 letter of authority dated 3.2.2014, the applicant was granted family pension as a divorced daughter of the deceased Railway servant, consequent to the death of her mother who was in receipt of family pension. However, by Annexure A1 order dated 6.11.2014 payment of family pension to the applicant was discontinued with immediate effect, subject to the condition that the family pension so far paid need not be recovered. Annexure A1 has been issued based on the Department of Pension and Pensioners Welfare OM No.1/13/09- P&PW (E) dated 18.9.2014 (Annexure A6). Paras.2 and 3 of Ext.P6 OM reads thus;
>
> "2. Provision for grant of family pension to a widowed/divorced daughter beyond the age of 25 years has been made vide OM dated 30.8.2004. 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 OM 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 this date.
>
> 3. It was further clarified vide OM dated 11th September, 2013 that if a daughter became a divorcee/widow during the period when the pension/family pension was payable to her father/mother, such a daughter, on fulfillment 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) Rule, 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 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 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."

10. In the instant case, at the time of death of her father, the applicant was a minor aged 14 years. After the death of her father, the applicant was a dependant of her mother, who was sanctioned with family pension. Though the applicant got married on 8.11.1981 and a female child was born in the said wedlock, the marriage has broken and she started living with her mother as a dependent, with effect from 17.11.1984. While so, her mother died on 6.3.2008. Therefore, the issue to be decided is as to whether the applicant is a 'divorced daughter' of a deceased Railway servant at the time of death of her mother, who is entitled for payment of family pension as provided under Rule 75 of the Railway Services (Pension) Rules.

11. Relying on Annexure A4 judgment of the Family Court dated 16.6.2012 in O.P.No.778 of 2011, the learned counsel for the petitioner/applicant would contend that, in view of the finding in the said judgment that, the applicant is living separately from her husband from 18.11.1984, she has to be treated as a divorcee with effect from 18.11.1984. If that be so, as on 6.3.2008, the date on

which her mother died, was a divorced daughter of a retired Railway servant, who is entitled for family pension as provided under Rule 75 of the Railway Services (Pension) Rules.

12. As discernible from Annexure A4 judgment of the Family Court, it is an ex parte judgment granting the applicant a decree of divorce under Section 13(1)(vii) of the Hindu Marriage Act, 1955 on the ground that her husband has not been heard of as being alive for a period of more than 20 years by those persons who would naturally have heard of it, had her husband been alive. The Family Court, by Annexure A4 judgment, allowed O.P.No.778 of 2011 by granting a decree of divorce holding that the marriage between the applicant and her husband solemnised on 8.11.1981 stands dissolved with effect from the date of judgment, i.e., 16.6.2012.

13. **In Accounts Officer (Pension Sanction) v. Mariyamma (2010 (2) KLT 241), a similar issue has come up for consideration before a Division Bench of this Court. In the said case, the question was as to the entitlement of family pension by a married daughter of a deceased Government servant, who was deserted by her husband few days after the marriage. After considering the rival contentions, with reference to sub-rule (6) of Rule 90 of Part III Kerala Service Rules, it was held that such deserted daughter cannot be said to be a member of the family of the employee for the purpose of payment of family pension. Para.7 of the judgment reads thus;**

"7. As per items (e), (j) and (k) of sub-rule (6) of Rule 90 only unmarried daughters above 25 years of age or disabled divorced daughters/widowed disabled daughters of the employee are eligible for payment of family pension. The petitioner was admittedly given in marriage to Sri.Jacob even while her father was alive. Therefore, she is not an unmarried daughter of the employee. She does not also suffer from any physical or mental disorder or disability. The

> marriage between her and Sri.Jacob has not been dissolved. Therefore, she cannot be treated as a disabled divorced daughter. Her husband is alive and therefore, she cannot be treated as a disabled widowed daughter. In our view, on the terms of Rule 90(6) of Part III Kerala Service Rules, the petitioner cannot, therefore, be said to be a member of the family of the employee for the purpose of payment of family pension."
>
> 14. In the instant case, in view of Annexure A4 judgment, the applicant can be treated as a divorcee only with effect from 16.6.2012. As discernible from Annexure A4 judgment, the applicant had earlier approached the competent Civil Court in O.S.No.15/2001 alleging that her husband has not been heard for more than 17 years and seeking for appropriate declaration to that effect. However, the said suit ended in dismissal for want of evidence to substantiate the said claim. Therefore, as on 6.3.2008, the date on which the applicant's mother died, she cannot be treated as a divorced daughter of a retired Railway servant, who is entitled for family pension as provided under Rule 75 of the Railway Services (Pension) Rules. In that view of the matter we find absolutely no reason to interfere with Ext.P6 judgment of the Tribunal to the extent of dismissing O.A.No.1106 of 2014 filed by the applicant by repelling the challenge made against Annexure A1 order dated 6.11.2014."

26. Again, in OA.314/2014 before the CAT, Jabalpur Bench delivered on 05.03.2015, in a case where respondent department was the Ministry of Defence, in a similar matter where divorce took place after the death of pensioner, the OA was dismissed. The father (pensioner) superannuated in 1984 and died in 2009. The mother predeceased applicant's father in 1983 as in the present OA. Applicant married in 1993. But applicant started living with her father since 2008. The divorce decree was issued in 2013. The CAT, Jabalpur Bench dismissing the OA held as follows:-

> "6. The father of the applicant died on 29.7.2009 and after a period of more than three years the applicant applied for

> divorce decree in the year 2013 and obtained exparte divorce decree on 29.12.2013. The aforementioned provisions clearly stipulates that family pension to a divorced daughter is payable provided she fulfills all eligibility conditions at the time of death/ineligibility of her parents. Thus, at the time of death of her father the applicant was not fulfilling the eligibility criteria for grant of family pension as she obtained the divorce decree only on 29.12.2013 whereas her father died on 29.7.2009. Therefore, in terms of the aforesaid provisions she is not entitled for grant of family pension.

27. There is force in respondent's contention that reliance by applicant on **Violet Isaac (supra), Bhagwati Mamtani Vs. Union of India (supra)** are not tenable, facts and circumstances being distinguishable.

28. In view of the forgoing judicial pronouncements seen in the great details, the matter has attained finality by the judgment of the Hon'ble High Court of Kerala at Ernakulum. The judgment of Hon'ble High Court of Kolkatta on the other hand is not binding on this Tribunal, even as the applicant has failed to establish whether the facts and circumstances of this unreported judgment are similar to the present OA.

29. Hence, in the present OA, applicant cannot be granted family pension as per Law. The applicant's claim that she was issued a medical card in 2006 when her pensioner father was alive or that her Voter I Card showing the address of her natal/parental home has no consequence whatsoever in the face of Rule position, as discussed. Hence, the OA stands resoundingly established based on law and facts, in favour of the case of respondents and the OA is liable to be dismissed.

30. As regards delay, since the matter pertains to grant of family pension, the cause of action in pension matters being continuous, delay, if any, stands condoned.

31. Accordingly, OA dismissed. No costs.

(Ms.B. Bhamathi)

Member (A)

Amit/-