

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

**O. A. No. 667/2016 With M.A.No. 495/2016
Ahmedabad : this the 6th March, 2019**

CORAM :

Hon'ble SH. M.C.Verma, Judicial Member

Smt. Jaswantiben D/o Chhanabhai Hamirbhai Dharajia, aged about 51 years (Date of Birth : 17.12.1965), address : Vishipara, Opp. Industries of Pujarabhai, Wankaner, District Rajkot – 360 001. **...Applicant**

[By Advocate : Ms. K.L. Kalwani]

Vs.

1- Union of India Owing & Representing Western Railway, through its General Manager, Western Railway, Churchgate, Mumbai – 400 020.

2-Divisional Railway Manager, Western Railway, Kothi Compound, Rajkot – 360 001.

3-Ashok Govind Vaghela aged about..years, working as Khallasi, Carriage & Wagon Department, Western Railway, Hapa (Jamnagar) – 361120, residential address : Meldi Mataji Mandir, Hapa (Jamnagar) 361 120. **...Respondents**

[By Advocate : Ms. R. R. Patel]

O R D E R (Oral)

By the Court :

1. The applicant, Smt. Jaswantiben, being aggrieved by the inaction of the respondents to grant family pension to her, has preferred this OA, with application for condonation of delay. She has pleaded that she is divorcee daughter of her father, namely Shri Chhanabhai Hamirbhai Dharajia, that her father was in service of the respondents and at the time of his superannuation was working as PW Mistry at Wakaner in Engineering Department of Western Railway. That after superannuation her father was getting pension and he died on 20.11.1987. That thereafter, after the death of her father, her mother was getting family pension and she also died on 02.11.2000. That she is divorce daughter of her father and

hence is entitled for family pension. That she had three brothers, one brother Govind has died on 08.05.2009 when was of age of 47 year of age and she is having responsibility of bringing up of two minor son of her brother Govind as widow of Govind has remarried. That another brother of applicant, namely Shamji, born on 05.10.1950 is of unsound mind since last 65 years. That she applied for family pension on 07.12.2015 and also on 29.12.2015, copy of her applications are Annexure. A-9 & 11 respectively, that some documents were demanded by the respondents which she provided but no decision has been taken on her said representation.

2. Respondents have filed their reply and has disputed that the claim of applicant for family pension cannot be redressed as she has not produced divorce decree from competent court and customary divorce deed is conspicuously not provided in Rules. It has also been pleaded that her name has not been included in PPO, during the life time of her parents. That OA is time barred and is devoid of merits also.
3. Heard the learned counsel for the parties and considered the submissions. Learned counsel for applicant, K.L.Kalwani Advocate while pressing the OA submits that whatever documents were needed have been supplied. She contended that applicant is entitled for family pension and her case has not been decided by respondents. It is inquired from learned counsel for applicant whether copy of divorce deed has been supplied and she submits that copy of the divorce deed executed between the applicant and her husband and copy of affidavits dated

24.01.2001 and 16.08.2007 confirming the divorce, has been supplied to the respondents and the same are annexed with OA as Annexures A/1 to A/3.

4. Learned counsel for respondents made a categorical statement at Bar that applicant has not supplied them all desired documents/forms. She also contended that applicant has mis-lead by hiding the fact that applicant is having disabled brother. She placed reliance on O.M. dated 11.09.2013 (Annexure of OA, legible copy of which supplied during hearing and was taken on record). Learned counsel urged that as per Para 3 of O.M. dated 11.09.2013 the family pension is payable to the disabled children for life and then to the unmarried / widowed / divorced daughters above the age of 25 years. It was therefore urged that pension could not be granted to the applicant while first right is of disabled son of the deceased.
5. While rebutting the submission advanced by respondent's counsel it is contended by learned counsel for applicant that this plea that the family pension is payable to the disabled children for life and then to the unmarried / widowed / divorced daughters was not taken by respondents in their reply and hence they legally are estopped to take this plea now.
6. The grievance of the applicant is that she being divorce daughter of her father is entitled to family pension, she applied for family pension vide her representation dated 07.12.2015 and 29.12.2015 but her said request(s) has not yet been decided by the respondents. From pleadings and submissions made at Bar it is undisputed that applicant has given

application to respondents for family pension and her said request for family pension has not yet been decided by the respondents.

7. It is also significant to note herein that the fact of having disabled son of deceased employee is having heavy bearing upon grant of family pension in favour of other children, above age of 25 years. Unfortunately, representation dated 07.12.2015 of applicant, as informed does not disclose this fact that disabled son of deceased employee is also there and for the first time, it came to the knowledge through pleadings in the O.A. Para 3 of O.M. dated 11.09.2013 stipulates that ***"as per Rule 54 (8) of the CCS (Pension) Rules, 1972 the turn of unmarried children below 25 years of age comes after the death or remarriage of their mother / father i.e. the pensioner and his/her spouse. Thereafter, the family pension is payable to the disabled children for life and then to the unmarried / widowed / divorced daughters above the age of 25 years."***
8. Apparently, learned counsel for applicant has not shown any reason or ground, based upon which, contention of prior right of applicant, over the disabled brother could hold good. The grievance of the applicant is that her request for family pension has not yet been decided by the respondents and since the representation(s) of the applicant is/are pending it would not appropriate to adjudicate the O.A., on merits, to allow or to deny the right of family pension to the applicant. I think it would be appropriate, to ensure / secure justice to all to dispose of this OA, with some direction and it can be done by giving a direction to the

respondents to consider the case of the applicant for family pension and to take decision thereon, if applicant is ready and willing to file fresh representation giving necessary details, including the factum that she is having disabled brother. Hence, without entering into other details, applicant is granted liberty to file fresh representation for family pension, if she wishes and is advised that in spite of having disabled brother she is entitled to family pension, within three weeks of receipt of copy of this Order, giving necessary details, including the factum that she is having disabled brother. If applicant did file any fresh representation same shall be considered by respondents and decision thereon shall be taken expeditiously and in any case within two months of its receipt. The documents which already had been supplied to the respondents, with earlier Representation need not to be supplied again.

9. With above said observations and directions, the OA stands disposed off.
No order as to costs. MA pending also stand disposed of.

[M.C.Verma]
Judicial Member

