

CENTRAL ADMINISTRATIVE TRIBUNAL  
AMHEDABAD BENCH

Original Application No. 215/2015  
Ahmedabad, this the 3<sup>rd</sup> January, 2019

CORAM :

Hon'ble Sh. M.C. Verma, Member (J)

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Smt.Ranjanben R. Dethaliya D/o Ranchodhbhai Dethaliya aged 58 years, Resident of Plot No. 2118/E Vallabh Tenaments, Parimal Chowk, Near Custo Office, Bhavnagar – 36400.

...Applicant

**(By Advocate :Ms. S.S.Chaturvedi)**

**VERSUS**

1-Union of India notice to be served through General Manager, Western Railway, Churchgate, Mumbai – 400 020.

2-Deputy Chief Material Manager,General Stores Depot, Western Railway 'D' Cabin,Sabarmati,Ahmedabad- 380019                   ...Respondents

**(By Advocate :Mr. M.J.Patel)**

**O R D E R**

**M.C.Verma, Member (Judicial)**

1. Being aggrieved by non-granting of benefit of family pension to applicant, on the ground that her husband at the time of divorce has granted alimony to her, instant OA has been preferred by applicant Ranjanben R.Dethlia.

2. Brief facts, as has been set out in the OA by applicant Ranjanben R. Dethlia are that her father, Shri Ranchodhbhai Dethlia was employee of respondents, was serving as Store Khalasi at Bhavnagar, superannuated on 30<sup>th</sup> June, 1984 and expired on 18<sup>th</sup> February, 1996. That after death of her father, her mother was getting family pension regularly until her death, vide PPO dated 21.03.2012 issued by the FA&CAO (**Annexure A/3**), she also died on 11.05.2013 and her death certificate is **Annexure A/7**.It is pleaded, in the OA, that applicant got customary divorce on

18.02.1976 and was living with her parents being their dependent divorced daughter, in family identity card issued by the respondents on 24.05.2012 (**Annexure A/5**) her name is at serial no. 2 and free Pass has also been issued to her by the respondents, vide no. H245102 dated 15.02.2013 **Annexure A/6**. That applicant approached the Civil Court, Bhavnagar for decree of dissolution of marriage, under section 13(1)(B) of Hindu Marriage Act and the marriage, in HMP No. 67/2011, was dissolved by the learned Court vide order passed on 13.05.2011 (**Annexure A/4**). It is also the pleading of applicant that after death of her mother she submitted her representation, dated 10.06.2014 (**Annexure A/8**), for release of dependent family pension but it was rejected on 15.09.2014, vide **Annexure A/1**, on the ground that her ex-husband has paid her lifetime maintenance. Thereafter on 30.09.2014 she got sent a legal notice (**Annexure A/10**) and enclosed with it, affidavit, dated 29.09.2014 (**Annexure A/9**) swear-ed by her ex-husband before the Executive Magistrate, Bhavnagar having declaration that he has not paid anything to his Ex-wife, the applicant, towards maintenance allowance. That on 28.03.2015, vide **Annexure A/11** advised the applicant to produce rectified divorce deed. Applicant has preferred instant OA for issuing a direction to the respondents to release family pension to her, with all consequential benefits by quashing orders at Annexure A/1 & Annexure A/11.

3. Respondents, upon issuance of notice did file reply and contested the claim of applicant for family pension. Respondents, in their reply opposed the claim of applicant, for family pension on the ground that customary divorce is not legally permissible and could not be accepted and Divorce Deed of court of Law specifically speaks about payment of lifetime maintenance to her, though amount is not

mentioned. That the applicant is not fulfilling the basic criteria for dependency, her income should not exceed Rs. 3500/- + D.A. which is basic criteria for dependency, and since her claim was not within the ambit so it was rightly rejected. It has also been pleaded that applicant, before the competent court has declared that she has received maintenance and this fact is very much mentioned by the learned Court also in its judgment and decree and therefore, applicant cannot change her version and, in these circumstances, her claim deserves to be rejected on this ground alone. That at the same time, applicant would have to produce income certificate to the effect that her income is not more than 3500+DA per month, which she has never produced. Respondents, in para 3 of their reply categorically has stated that Paras 4.1 to 4.3 of O.A. needs no reply.

4. Applicant filed rejoinder reiterating her claim that she is entitled to the relief claimed in the O.A. stating that her income is not more than 3500+DA per month and she also annexed income certificate dated 05/07/18 (**Annexure A/15**), issued by Mamlatdar of Bhavnagar city wherein her annual income is shown as Rs. 36,000/- per annum only.

5. Matter was admitted and was fixed for final hearing. Heard Ms. S.S. Chaturvedi, Ld. Counsel, who appeared for the applicant and Shri M.J.Patel, learned counsel, who appeared for the Respondents and have perused the record minutely.

6. Learned counsel for the applicant, while pressing case of the applicant for family pension has urged that it is not disputed that applicant is daughter of deceased employee of the respondents or was not living with her parents or she took divorce from her husband during the life time of her parent and thus therefore, the respondents ought not to have deny family pension to her on this ground that her husband

at the time of divorce has granted alimony to her, especially when affidavit dated 29.09.2014 swear-ed by her ex-husband before the Executive Magistrate, Bhavnagar having declaration that he has not paid anything to his Ex-wife, the applicant, towards maintenance allowance was there. She placing reliance upon the decision, dated 03.04.2018 of Hon'ble High Court of Bombay (Nagpur Bench) in case titled ***Union of India & Ors. vs. Smt. Usha Eknath Patil***, delivered in Writ Petition No. 6884/2016 urged that applicant is entitled to the relief claimed in the O.A. She also referred income certificate (**Annexure A/15**), issued by Mamlatdar of Bhavnagar city and contended that applicant was dependent upon her parents, her income is Rs. 36,000/- per annum only and not more than 3500+D.A. per month.

7. Learned counsel for the respondents opposed the submissions and urged that divorced daughter, if is dependent of parents may be granted family pension but the applicant was not dependent of her parents. Thatthe applicant is not fulfilling the basic criteria for dependency, applicant before the court, which granted divorce, has declared that she has received maintenance and this fact is very much mentioned by the learned Court also in its judgment and decree and therefore, applicant cannot take benefit of affidavit of her ex-husband and her claim deserved to be rejected and was rightly rejected. Learned counsel also urged that her income should not exceed Rs. 3500/- + D.A. which is basic criteria for dependency in the Department and at the time of filing claim for family pension applicant produceno certificate to the effect that her income is not more than 3500+D.A. per month.

8. Considered the submissions. Family, in relation to railway servant, means - (i) wife in the case of a male railway servant or husband in the case of a female railway servant; (ii) a judicially separated wife or

husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery;(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;(iv) dependent parents :(v) dependent disabled siblings (i.e. brother or sister) of a railway servants.

9. Clause nos. 4 & 5 of office memorandum dated 11.09.2013, Annexure R-1, insofar as it is relevant for present purpose; reads as under: -

***“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 wp 6884.16.odt 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 fulfils all eligibility conditions at the time of death / ineligibility of her parents and on the date her turn to receive family pension comes.***

***5. As regards opening of old cases, a daughter if eligible as explained in the preceding paragraph, may be granted family pension with effect from 30<sup>th</sup> 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 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 30<sup>th</sup> August, 2004. Since she was a wp6884.16.odt 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”.***

10. As noted above respondents, in their reply has stated in para 3 that Para 4.1 to 4.3 of O.A. needs no reply. In para 4.1 to 4.3 of O.A.

there is factual details and therefore, the indisputable facts emerged are that the applicant is divorced daughter of retired Railway employee Rancho Bhai Dethaliya, who retired in year 1984 and after his death, on 18.02.1996, mother of the applicant was getting family pension and she also has died on 11.5.2013. The applicant was married in year 1973, she and her husband mutually ended their marriage bond in 1976 and by separating herself from her husband applicant started to live with her parents. The divorce under section 13 (b) was granted on 13.05.2011, meant to say prior to the date of death of the mother of the applicant.

11. The only dispute is regarding dependency of the applicant. The grounds for rejection of family pension stated in pleading as well-advanced during argument is that at the time of getting divorce, applicant received lifetime maintenance from her husband so she cannot be treated dependent of the deceased government employee and she cannot take benefit of affidavit of her ex-husband. It has also been tried to put forward that her income should not exceed Rs. 3500/- + DA which is basic criteria for dependency in the Department and at the time of filing claim for family pension applicant would produce no certificate to the effect that her income is not more than 3500+DA per month.

12. Be that it may be facts show that applicant was residing with her parents and was therefore, member of family of her deceased father. Clause 19 (b), mentioned supra, is wide and looks after welfare of family of deceased employee. Clauses 4 and 5 of Office Memorandum dated 11.09.2013), mentioned supra, show the intention of Railways not to leave a destitute woman without any means of livelihood. This object and intention, when the provision entitles unmarried or a divorced or a

widowed daughter to family pension cannot be defeated, in present facts of instant case of applicant also.

13. Applicant is divorced daughter of the deceased employee of the respondents and was living with her deceased father, it was incumbent upon the respondent to have had the proper enquiry, may be through Welfare Inspector of the department, about the dependency of the applicant but unfortunately, they adopting short cut & taking shelter of one sentence of judgment of divorce absolved themselves from this pious obligation by directing the applicant to produce rectified divorce deed. Whether the respondents ought not to have appoint a Welfare Inspector to ascertain the true facts whether any maintenance was given or not, if any amount was given what would be its effect on the family pension and whether the same is sufficient to fetch monthly income of Rs. 3500/- + DA which is basic criteria for dependency in the Department but that was not done by the respondents.

14. Learned counsel for applicant could contend that Annexure A/15, the Income Certificate purportedly issued by the Mamlatdar, Bhavnagar City shows the total income of the applicant as 36000/- per month but it was filed by applicant at the stage of rejoinder only. Taking in view the totality of the facts this Bench is of the view that it would be in the interest of justice if this O.A. is disposed of with direction to Respondent No. 2 to conduct a fair inquiry to ascertain aforesaid facts and to consider the case of the applicant afresh, to pass order on the basis of facts yielded in the matter and to communicate the decision taken, without delay, to the applicant. Ordered accordingly, with further direction to Respondent No. 2 to complete said entire exercise within three months from the date of receipt of a copy of this order.

15. Accordingly, impugned orders, Annexures A-1 & A-11, are quashed and with aforesaid observations and directions, this O.A. and M.A., if any is pending, stand disposed of. No order as to cost.

**(M.C.Verma)**  
Member (J)

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