

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CHANDIGARH BENCH

O.A.NO.060/00726/2017

Orders pronounced on: 07.05.2019  
(Orders reserved on:04.04.2019)

CORAM: **HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MS. P. GOPINATH, MEMBER (A)**

Mamta Sharma, aged 46 years, Group-D, D/o Late Sh. Janak Raj  
Sharma r/o Ram Tirath Road, B/s D.T.O. office Q. No. 19 GF,  
Amritsar, Tehsil and District Amritsar (Punjab).

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Applicant

**(BY MR. AMIT SHARMA, ADVOCATE).**

Versus

1. Union of India through Secretary, Ministry of Defence,  
South Block, New Delhi.
2. Union of India through Secretary, Ministry of Personnel,  
P.G. & Pensions, Lok Nayak Bhawan, Khan Market, new  
Delhi.
3. Military Engineer Service, Engineer-in-Chief Branch,  
Army head Quarter, Kashmir house, DHQ, PO, New  
Delhi-110011.
4. Chief Engineer, HQ, Western Command, Chandimandir,  
Panchkula (Haryana).
5. Garrison Engineer, Amritsar.
6. CDA (Pension), Allahabad.

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Respondents

**(BY MR. B.B. SHARMA, ADVOCATE).**

**ORDER**  
**HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)**

1. The applicant has filed this Original Application (O.A) under section 19 of the Administrative Tribunals Act, 1985, seeking quashing of the order dated 11.9.2017 (Annexure A-4), vide which her claim for family pension has been rejected, as after marriage, daughter is not dependent upon her parents and she became widow after death of the pensioner and OM dated 11.9.2013 (Annexure A-3).

2. The facts of the case, which led to filing of the instant O.A, are that the applicant's father was working as Senior Mechanic and expired. In his place, mother of applicant was employed. She retired and was granted pension. The applicant got married on 1.4.2005. Her mother too expired on 19.7.2006. To her misfortune, her husband also died on 20.6.2010. The applicant requested for grant of family pension which was rejected vide order dated 13.1.2014 on the basis of OM dated 11.9.2013, on the premise that she was not dependent on pensioner, at the time of her becoming widow. Hence, the O.A.

3. The respondents have resisted the claim of the applicant. They submit that family pension is allowed to the children on the premise that they are dependent on their parents, government servant as well as his/her spouse. Dependent 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 death of her parent. The Government has made it clear in O.M dated 12.10.2009 that daughter of the government servant, who was married and not dependent on her father when he was alive, is not eligible to receive family pension, later on after death of her husband. Thus, they justify the impugned orders.

4. We have heard the learned counsel for the parties at length.

5. The learned counsel for the applicant vehemently argued that there cannot be any discrimination between two categories, one who become widow during life time of pensioner and one who becomes withdow after death of pensioner and as such the impugned order is liable to be quashed and set aside. On the other hand the respondents, through their counsel, would submit that since claim of applicant is not covered under various instructions issued by competent authorities.

6. We have carefully considered the submissions on both sides and examined the material on file with the able assistance of learned counsel for the parties.

7. The facts are not at all in dispute that the applicant became widow after death of the pensioner. Learned counsel for applicant argued that his case is covered by the decision in a bunch of cases by High Court of Uttarakhand at Nainital in Special Appeal No. 187 of 2017 titled **UDHAM SINGH NAGAR DISTRICT COOPERATIVE BANK LTD. & ANOTHER VS. ANJULA SINGH & OTHERS**, decided on 25.3.2019, in which the issue of married daughter in the definition of family for grant of compassionate ground was considered under rule 2 © of the Uttar Pradesh Recruitment of Dependants of Government Servants dying in harness Rules, 1974. After elaborate discussion, it was held that

non inclusion of a married daughter, in the definition of family in indicated rule, thereby denying her the opportunity of being considered for compassionate appointment, even though she was dependent on the government servant at the time of his death, is discriminatory and is in violation of Articles 14, 15 and 16 in Part III of the Constitution of India. Thus, married daughter would fall within the meaning of family, of the deceased government servant. The decision, to say the least, would not come to the rescue of the applicant as that is given in the specific facts and rule position on appointment on compassionate grounds and not for grant of pension which is governed by different rules and regulations.

8. Rule 75(6) of Railway Services (Pension) Rules, 1993 deals with grant of family pension to dependent son or daughter. Railway Board letter dated 05.11.1997 in para 7.2, while changing definition of family, included widowed/divorced daughters for the purpose of grant of family pension. Though subsequent to that various circulars were issued indicating eligibility qua release of family pension to dependents of deceased retired employee. As per DoPT letter dated 11.9.2013 (Annexure R-1), after marriage, daughter is not dependent upon her parents. As per OM dated 30.8.2004 (Annexure R-6), and O.M dated 11.10.2006 (Annexure R-2), family pension is admissible to eligible widowed / divorced daughter even if she becomes widow/ divorcee after attaining age of 25 years. It was also clarified vide OM dated 28.4.2011 (Annexure R-3), that subject to fulfillment of other conditions, the widowed / divorced daughter will be eligible for pension w.e.f. 25.8.2004, irrespective of the date of death of

employee / pensioner. The issue was whether pensioner died before or after 25.8.2004, family pension was admissible to widowed / divorced daughters, who fulfilled relevant conditions. Vide clarification dated 11.9.2013 (Annexure R-4), it was clarified that family pension is payable to the children as they are considered to be dependent on employee/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 is considered to be dependent on his/her parents. 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. It was clearly clarified that a daughter who is leading a married life at the time of death of her parents does not fulfill the condition of widowhood / divorce attached to the grant of family pension. Again, vide OM dated 18.9.2014, it was clarified that family pension should discontinue in those cases where it had been sanctioned in pursuance of those O.Ms but without considering that widowed / divorced daughter was leading a married life at the time of death of her father / mother etc. OM dated 18.09.2014 (Annexure R-6) reads as follows:

"O.M. 1/13/09-P&PW (E) dated 18.09.2014

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

The undersigned is directed to refer to Ministry of Railways (Railway Board)'s OM No. F(E)III/2007/PN1/5, dated 28.08.2014 on the above subject.

2. Provision for grant of family pension to a widowed/divorced daughter beyond the age of 25 years has been made vide OM dated 30.08.2014. This provision has been included in clause (iii) of sub-rule 54 (6) of the CCS (Pension), Rule, 1972. For settlement of old cases, it was clarified, vide OM dated 28.04.2011, that the family pension may be granted to eligible

(O.A.No. 060/00726/2017-  
Mamta Sharma Vs. UOI etc.)

widowed/divorced daughters with effect from 30.08.2004, in case the death of the Govt. Servant/pensioner occurred before this date.

3. It was further clarified vide OM dated 11.09.2013 that if a daughter became divorced/widow during the period when the pension/family pension was payable to her father/mother, such a daughter, on fulfilment of other conditions, shall be entitled to family pension. The clarification was aimed at correctly interpreting the conditions of eligibility of a widowed/divorced daughter in terms of the concept of family pension under the CCS (Pension) Rules, 1972. It was also stated that it was only a clarification and the entitlement of widowed/divorced daughter would continue to be determined in terms of OM dated 25/30.08.2004 read with OM dated 28.04.2011. 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 to maintain equality before law, family pension payable to such daughters is discontinued. However, recovery of the already paid amount of family pension would be extremely harsh on them and should not be resorted to.

4. This issues with the approval of Secretary (Pension)."

9. Perusal of the above makes is crystal clear that by amending definition of family, widowed daughter was also included and held entitled to family pension if she is really dependent upon father/mother. However, if she was leading a married life at the time of death of her father/mother then she is ineligible for family pension. Thus, applicant cannot be granted any benefit.

10. In fact, the issue as raised in this case stands clinched by various decisions of this Tribunal including by Guwahati Bench in O.A. No. 040/00214/2015 titled **SMT. SOMA GHOSH (DEV) VS. THE UNION OF INDIA & OTHERS**, rendered on 14.2.2017. The relevant part of the order is reproduced as under :-

"19. Though this Court empathizes with the financial need of the applicant, but it cannot agree to the unreasonable and illogical submission that a married daughter can be considered at the time of the death of her husband as dependent on the parents, who died earlier to the death of her husband. If the parents are not alive, the daughter cannot be considered to be dependent on them and accordingly, we do not find any merit either on the basis of facts or law to intervene".



11. In view of the aforesaid discussion, it is held that since the applicant, at the time of death of her mother (pensioner) on 19.7.2006 was leading a married life and was not dependent upon the pensioner, and she became widow only on 20.6.2010, she was not eligible for grant of family pension.

12. In the wake of the above discussion, we find that present OA is devoid of any merit and is dismissed accordingly, leaving the parties to bear their own costs. Connected M.As also disposed of accordingly.

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**(P. GOPINATH)**  
**MEMBER (A)**

**PLACE: CHANDIGARH.**  
**DATED: 7<sup>th</sup> MAY, 2019**

HC\*

