

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. NO.2653 OF 2018

This the 15th day of October, 2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Smt. Rajwati, aged 59 years
D/o Sh. Jogi Dass,
r/o J-4/122B, DDA Flats,
Kalkaji, New Delhi.

.... Applicant

(By Advocate : Shri Yogesh Sharma)

VERSUS

1. Union of India through the Secretary,
Ministry of Agriculture & Cooperation,
Krishi Bhawan, New Delhi.
2. The Director,
Directorate of Extension,
Ministry of Agriculture & Cooperation,
Krishi Bhawan, New Delhi.
3. The Administrative Officer (Accounts)
Directorate of Extension,
Ministry of Agriculture & Cooperation,
Krishi Bhawan, New Delhi.

..... Respondents

(By Advocate : Ms. Harvinder Oberoi)

O R D E R (Oral)

By filing this OA, the applicant is seeking the following
reliefs:-

“(i) That the Hon'ble Tribunal may graciously be pleased to pass of quashing the impugned order dated 20.4.2018 (A/1) declaring to the effect that the whole action of the respondents not granting the family pension to the applicant is illegal, arbitrary and against the rules and consequently, pass an order directing the respondents to grant the family pension to the applicant in respect of Late Sh. Jogi Dass w.e.f. 26.2.2009 i.e. from the

date of death of her moth with arrears of pension and with interest @ 18%.

- (ii) That in case of not granting the above prayer relief(i) for any reason, alternatively, the Hon'ble Tribunal may graciously be pleased to pass of directing the respondents to grant the family pension to the applicant w.e.f. 26.3.2012 i.e. the date of judgment regarding divorce of the applicant with all the consequential benefits with all the consequential benefits with arrears of pension and with interest @ 18%.
- (iii) Any other relief which the Hon'ble Tribunal deem fit and proper may also be granted to the applicant along with the costs of litigation.”

2. Brief facts of the case are that applicant - daughter of Shri Jogi Ram was married on 19.6.1982 and the applicant got divorced on 18.9.1988 on mutual agreement between the parties on a judicial stamp paper of Rupees 10/- as per the customs prevalent.

2.1 The father of the applicant, namely, Shri Jogi Ram, was working as Group 'D' employee in Directorate of Extension, Ministry of Agriculture & Cooperation, Krishi Bhawan, New Delhi and was died on 31.12.1996. After the death of applicant's father, mother of the applicant, namely, Smt. Surjo Devi was granted family pension. Her mother also died no 25.2.2009.

2.2 Applicant stated that as per OM No.1/19/03-P&PW (E) dated 30.08.2004, the divorced/widowed daughter of a Govt. servant is also entitled for granting her family pension during whole life.

2.3 Applicant further stated that although she got divorce on 18.9.1988 as per the customs prevalent but the applicant got divorce decree from the learned Civil Judge, Senior Division, Bhagpat vide judgment dated 26.3.2012 in case No.23/2011.

2.4 Applicant also stated that she submitted her request for grant of family pension and also submitted all the required documents, including the divorce decree from the competent court of law but the respondents vide order dated 20.4.2018 rejected the claim of the applicant on the ground that she has not filed the suit for declaration regarding her divorce w.e.f. 18.9.1988 and taken divorce on 26.3.2012 and also stated that “order dated 26.3.2012 appears to be consonance with the law laid down by the Apex Court. However, as the said order remains unchallenged and grants divorce between the parties, the same is effective from the date of order.”

2.5 Being aggrieved by the aforesaid impugned order dated 20.4.2018, the applicant has filed this OA seeking the reliefs as quoted above.

5. During the course of hearing, counsel for the applicant by referring to the facts of this case submitted that from the divorce decree of the learned Civil Judge, Senior Division, Bhagpat vide judgment dated 26.3.2012, it is evidently proved that applicant’s marriage was dissolved between the applicant

and her husband on 18.9.1988 on a mutual agreement arrived at between them on a judicial stamp paper of Ten Rupees but when the applicant came to know that it should be done through the competent Court, the applicant approached her husband for taking mutual divorce through the Court, and when he refused to do so, therefore, she moved the said case for grant of divorce decree, which was granted by the learned Civil Judge, Senior Division, Bhagpat vide judgment dated 26.3.2012.

5.1 Counsel further submitted that Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pension and Pensioners Welfare, Lok Nayak Bhawan vide OM dated 30.8.2004, has already provided that “there will be no age restriction in the case of divorced/widowed daughter who shall be eligible for family pension even after their attaining 25 years of age subject to all other conditions prescribed in the case of son/daughter. Such daughter, including disabled divorced/widowed daughter shall, however, not be required to come back to her parent home as stipulated in para 2(ii) of this Department’s O.M. dated 25th July 2001, which may be deemed to have been modified to that extent.”

5.2 Counsel also submitted that having regard to the judgment of learned Civil Judge, Senior Division, Bhagpat vide judgment dated 26.3.2012 and the aforesaid OM, it is clear that applicant was residing with her parents since

19.8.1988, i.e., before the death of her father. As such the applicant is entitled to grant of family pension.

5.3 Counsel also submitted that although the applicant's marriage was dissolved in 1988 as per the customs prevalent at that time and after taking into consideration the said contentions, the learned Civil Judge, Senior Division, Bhagpat vide judgment dated 26.3.2012 granted the divorce decree and keeping in view the aforesaid OM dated 30.8.2004, the applicant is entitled to grant of family pension after the death of her mother, i.e., 25.2.2009 or if this Tribunal does not agree to the said request, the applicant is entitled for grant of family pension from the date of grant of divorce decree vide judgment dated 26.3.2012 (supra).

6. On the other hand, learned counsel for the respondents by referring to the counter affidavit submitted that the family pension case of the applicant was sent to Ministry of Law & Justice, Deptt. of Legal Affairs for their opinion in the matter, who have opined that "In view of the facts of the matter, it appears that no decree of the court is required for establishing the factum of customary divorce, if the Claimant is able to prove the fact that a valid custom of customary divorce is permissible in her community and has in fact taken place. Such a divorce is saved by section 29(2) of the Act. As in the present case, the claimant has sought divorce under Section 13 of the Act and not a mere declaration about the

factum of customary divorce having been taken in the year 1988, the order dated 26.03.2012 appears to be not consonance with the law as laid down by the Apex Court. However, as the said order remains unchallenged and grants divorce between the parties, the same is effective from the date of Order".

6.1 Counsel further submitted that as per Govt. of India's OM No.1/13/09-P&PW(E) dated 19.07.2017, "grant of family pension to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the life-time of the employee/pensioner or his/her spouse but divorce took place after their death – provided the claimant fulfils all other conditions for grant of family pension under Rule 54 of the CCS (Pension) Rules 1972. In such cases, the family pension will commence from the date of divorce." However, in the present case, divorce proceedings have been filed on 17.1.2011 by the applicant in the court of law vide case No.23/2011 (i.e. after the death of Pensioner & Family Pensioner) and hence, the plea of the applicant that she be granted family pension at least w.e.f. 26.3.2012 is not tenable as per law and rules.

7. Having heard learned counsel for the parties and perusing the pleadings available on record, it is observed that from the judgment dated 26.3.2012 of the learned Civil Judge, Senior Division, Bhagpat, it is evidently clear that

applicant's marriage was dissolved way back on 18.9.1988, i.e., well at the time when her father was very much in service as her father expired on 31.12.1996 and she was residing with her parents since 18.9.1988 and in the said judgment, it is also noted that when the applicant came to know that the marriage be dissolved by a decree of court of law, she approached to her husband for mutual divorce decree but he refused to do so, therefore, the applicant approached the concerned Court for grant of divorce decree and that the said learned Court observed that applicant and her husband were living separately for about 15 years and during this period, there was no marital relationship between the applicant and her husband and that her husband did not come to call the applicant. As such it is evidently clear that applicant was residing with her parents since 18.9.1988 after mutual agreement arrived at between the applicant and her husband on a judicial stamp paper and the fact that the applicant has moved the said petition for divorce decree when she came to know about the fact that marriage should be dissolved by a decree of court of law and, therefore, she moved the said petition and the decree of divorce was granted to the applicant by learned Civil Judge, Senior Division, Bhagpat vide judgment dated 26.3.2012. Therefore, the provisions of the said OM dated 19.07.2017, relied upon by the respondents, is not strictly applicable in the peculiar facts

and circumstances of the applicant's case keeping in view the object of the CCS (Pension) Rules, 1972, as before the death of her father, the applicant was living with her parents as a divorced daughter by virtue of dissolution of marriage on 18.9.1988.

8. It is pertinent to mention that in the impugned order, the respondents themselves stated that "However, as the said order remains unchallenged and grants divorce between the parties, the same is effective from the date of Order."

9. In view of the above peculiar facts and circumstances of this case and for the reasons stated above, the OA is allowed. The respondents are directed to give/grant family pension to the applicant of this OA from the date of judgment dated 26.3.2012 and to pay the same within 90 days of this judgment.

10. In the result, the present OA is allowed. There shall be no order as to costs.

**(Nita Chowdhury)
Member (A)**

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