

**Central Administrative Tribunal
Ernakulam Bench**

OA No.180/00573/2018

Monday, this the 2nd day of September, 2019.

CORAM

Hon'ble Mr.Ashish Kalia, Judicial Member

K.S.Sunny, aged 78 years
S/o Late K.A.Samuel
Senior Accounts Officer (Retd)
Defence Accounts Department,
Kattipparambil House
Yuva Kala Tharang Road, Elamakkara P.O.,
Cochin-682 026.

Applicant

(Advocate: Mr. C.S.G.Nair)

versus

1. Controller of Defence Accounts,
Rajendra Path, Patna-800 019.
2. Principal Controller of Defence Accounts (Pension)
Draupadi Ghat, Allahabad-211 014.
3. Controller General of Defence Accounts
Ulan Batyar Road, Palam,
Delhi Cantt., New Delhi-110 010.
4. Union of India represented by
its Secretary,
Department of Pension & Pensioners' Welfare
South Block, New Delhi-110 001.

Respondents

(Advocate: Ms.P.K.Latha, ACGSC)

The OA having been heard on 2nd September, 2019, this Tribunal delivered the following order on the same day:

O R D E R (oral)

Applicant's wife Smt.Ratna Mukherjee was Senior Auditor in the Defence Accounts Department. She retired from service on superannuation on 31.7.2012. On the death of his wife, the applicant submitted Annexure A9 representation dated 14.9.2017 to the respondent No.1 along with his marriage certificate (Annexure A4) for sanctioning family pension in favour of him. The department took note of details of family members in PPO of Smt Ratna Mukherjee, the deceased employee. It was noted “*as family pension not sanctioned being a disputed case*”. As per CCA (Pension) Rules, 1972, if a pensioner dies, the spouse is entitled for family pension. The applicant has also produced Annexure A7 Ration Card and Annexure A8 Death Certificate where the applicant is shown as the husband of Smt.Ratna Mukherjee. Lastly it is submitted that there was no divorce as stated by the applicant's wife in Annexure A6 though they had been living separately. Thus it is represented to the department that they should have entered his name in the PPO, instead of entering it as a disputed case. Learned counsel for the applicant has also cited Rule 54 (11) in support of his contention during the course of arguments. The applicant seeks the following reliefs:

(i) Declare that the applicant is entitled for family pension of Late Ratna Mukherjee w.e.f. 1.7.2017.

(ii) Direct the respondents to sanction family pension of Late Ratna Mukharjee to the applicant w.e.f. 1.7.2017 and disburse the arrears of family pension with all consequential benefits within a stipulated period.

2. Notices were issued. Respondents are represented by Smt. P.K.Latha, ACGSC who has filed a detailed reply statement, objecting to the grant of

family pension to the applicant who is claiming to be the husband of the deceased employee (Late Smt. Ratna Mukherjee) with effect from 1.7.2017 with arrears. It is submitted in the reply that the issue raised by the applicant Sri K.S.Sunny, Ex. Senior Accounts Officer (retired on 28.2.1998 from Controller of Defence Accounts (CDA) Chennai) is related to grant of family pension after the death of his wife, named Smt. Ratna Mukherjee, Ex-SA (retired on 31.7.2012 from ALAO IGS, Hasting, Kolkata and died on 30.6.2017). It is further stated that the deceased employee had herself nominated her daughter Ms. Lima Joshi and son Mr. Antony Sunny in Form No.3. There was no mention of her husband Sri K.S.Sunny in the said Form, as she had been living apart from him for 27 years due to some disagreement and personal family problems and had no relation with him.

3. She had also informed that she was unable to submit their joint photograph since they had been separated for 27 years without legally divorced. Moreover, Form No.3 submitted by her on 4.6.2012 does not contain the name of her husband, in nomination column. As per practice, any nomination form submitted by the Government official is treated as his updated family details. Based on the documents submitted by late Smt. Ratna Mukherjee, the pension papers were forwarded to to the PCDA (Pension) Allahabad, the pension sanctioning authority, for sanction of pension and the PPO was issued with the remark *“family pension not sanctioned being disputed case”*.

4. It is further submitted in the reply that the petitioner had not availed of all available remedies and rushed to file this OA without approaching the next appellate authority i.e., Controller General of Defence Accounts, new Delhi and

further Secretary, Ministry of Defence (Finance). The respondents have also relied upon a judgment delivered by Mr. Justice P.R.Shivakumar and Mr. Justice V.S.Ravi of Madras High Court where it was held that “*marriage between a Hindu woman and a Christian man is not legally valid if either of them does not convert*”. In the instant case, Smt.Ratna Mukherjee had shown her religion as Hindu in her pension application and neither she nor the applicant has changed their religion to get their marriage solemnized. Nor they had registered their marriage under the Special Marriage Act, 1954. A marriage in a Church has no legal sanctity under the Indian Marriage Act, 1872 unless both man and woman are Christians or have converted into Christianity. There is no legal impediment for a Christian person marrying a Hindu. The marriage would be legal if it is registered as per the provisions of the Special marriage Act, 1954 and such marriage is valid for all purposes. The deceased employee Smt Ratna Mukherjee had mentioned her religion as Hindu in her pension application forms. So the marriage does not have any validity in the eyes of law in terms of provisions made in the Christian law or in Hindu law. The wedlock between the applicant and the deceased was a living arrangement without legal marriage. Hence it cannot be said the the applicant is a legally wedded husband or widower of late Smt.Ratna Mukherjee; not his lawful wife as legally recognized and not having legal force. The respondents have prayed for dismissal of the OA.

5. A rejoinder has been filed in which it is submitted that late Smt.Ratna Mukherjee and the applicant were living together since 18.6.1973 when both of them were working in the Pay and Accounts Office, Mahar Regiment Centre at

Sagar in Madhya Pradesh. Subsequently, they were married on 25.5.1974 after converting Smt.Ratna Mukherjee into Christianity. Her name was changed to Pushpa after marriage as is evidenced by Annexure A4. Marriage registration was not compulsory at the relevant point of time, hence the marriage was not registered.

6. Heard learned counsel on both sides, perused the records and appreciated the legal position submitted at the Bar. The short question to be considered is whether the applicant who was living separately from his wife (deceased Ratna Mukherjee) is entitled for family pension or not. Annexure A4 has been produced by the applicant in support of his contention that the marriage certificate issued by St. Theresa's Cathedral, Sagar, Madhya Pradesh, dated 19.7.2017, issued with reference number 026/2017 shows that the Church authorities had certified that the bridegroom is Samuel Sunny Kattiparambil, Nationality: Indian and parent: Samuel. The bride is mentioned as Pushpa, Nationality: Indian, Parent: Surendra Nath Mukargi (Mukherjee) in order to prove his marriage. He has further produced Annexure A2 PPO order which is issued by the Accounts Officer of the same office with seal and Annexure A3 which shows a joint photograph of Smt Ratna Mukherjee and Sri K.S.Sunny as husband and wife.

7. On the contrary, learned counsel for the respondents has submitted that this marriage is not valid in the eyes of law because she was not converted into Christianity. Sri C.S.G.Nair, learned counsel for the applicant submitted at the Bar that she was converted to Christianity and her name had been changed to Pushpa and the names of their children out of this marriage are Mrs.Lima

Sunny Joshi and Antony Sunny, daughter and son respectively. Learned counsel for the respondents submitted that the deceased employee had herself disclosed that she had been living separately for 27 years and she had not nominated her husband for receiving the pensionary benefits . Instead of this, she had disclosed the name of her children Mrs.Lima Joshi and Antony Sunny. Thus the department treated this as a disputed case.

8. On a perusal of Annexure A6, there is no doubt that the names so reflected by her at the time of retirement is that both are son and daughter of Mr. K.S.Sunny. She had further submitted in this application that *“In my family details dated 11.8.2011 the name of my husband is Shri K.S.Sunny & children very rightly reflected and accepted by CDA (Patna)”* meaning thereby that she was not denying the fact that she had been married to Mr.K.S.Sunny and both children were born out their wedlock. In Annexure A8 Death Certificate also, the name of the deceased employee is shown as late Smt. Ratna Mukherjee and her husband as Kattiparambil Samuel Sunny. This document is an authenticated one, issued by Govt. of West Bengal, Department of Health & Family Welfare, dated 3.7.2017. The Ration Card also shows that the name of Sri K.S.Sunny and this is read over to me by the Court Officer certifying the name as Sri K.S.Sunny. All these facts lead me to one direction that the marriage took place between these two individuals and both daughter and son were born out of this wedlock and they were living separately.

9. The legal/rule position is also examined by this Tribunal. As per Rule 54 (11-B)(c) of CCS (Pension) Rules, 1972 reads that:

“Subject to the proviso to or of sub-rule (11-A), after the child of children cease to be eligible for family pension under this rule, such family pension shall become payable to the surviving judicially separated spouse of the deceased Government servant till his or her death or remarriages, whichever is earlier”.

Prior to this, Rule 54 (11) reads as under:

“In case both wife and husband are government servants and are governed by the provisions of this rule and one of them dies while in service or after retirement, the family pension in respect of the deceased shall become payable to the surviving husband or wife and in the event of the death of the husband or wife, the surviving child or children shall be granted the two family pensions in respect of the deceased parents, subject to the limits specified”.

10. These rules depict that the family pension can also be given even to the judicially separated husband or wife in case their child or children cease to be eligible for family pension. In the case on hand, daughter Leema Joshi has since been married as disclosed by PPO itself and son Antony Sunny who is aged above 18 years, ceases to be entitled to get family pension. Thus, in my considered view, the applicant falls in the entitled category. Accordingly this Tribunal has no hesitation to hold that the applicant is entitled for family pension in terms of Rule 54 (11-B) Sub Clause (c). As regard the objection raised by the counsel for the respondents that the marriage was not in terms of the Indian Marriage Act and the applicant is not entitled for family pension, in the present case, even judicial separation is not there and the applicant is still having status of husband (though estranged) of late Smt. Ratna Mukherjee. . In the Pension Payment Order itself, she has disclosed that the applicant is her husband though living separately. This Tribunal finds that there is merit in the present OA and deserves to be allowed. Hence OA is allowed and this Tribunal holds that the applicant is eligible to claim the benefit of Rule 54 (11-B) Sub

Clause (c) mentioned herein above. The respondents are directed to consider the case of the applicant for grant of family pension. This exercise shall be done within a period of three months from the date of receipt of this order. No order as to costs.

(Ashish Kalia)
Judicial Member

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Annexures filed by the applicant:

- Annexure A1: Copy of the PPO No.C/DAD/10911/97.
Annexure A2: Copy of the Pension Certificate.
Annexure A3: Copy of the joint photograph of the applicant and his wife submitted along with the pension documents by the applicant at the time of his retirement.
Annexure A4: Copy of the Marriage Certificate issued by the Church authorities of St.Thomas Cathedral, Sagar, Madhya Pradesh.
Annexure A5: Copy of the PPO No.C/DAD/17164/2012.
Annexure A6: Copy of the covering letter along with Form 3.
Annexure A7: Copy of the Ration Card No.1732057807 34.
Annexure A8: Copy of the Death Certificate dated 3.7.2017 issued by the Maheshtala Municipality.
Annexure A9: Copy of the representation dated 14.9.2017.
Annexure A10: Copy of the reminder dated 25.10.2017.
Annexure A11: Copy of the representation dated 10.12.2017 submitted to the 3rd respondent.
Annexure A12: Copy of the intimation dated 17.1.2018 issued by the 3rd respondent.
Annexure A13: Copy of the letter dated 24.1.2018 issued by the 1st respondent.
Annexure A14: Copy of the letter dated 15.2.2018.
Annexure A15: Copy of the letter No.G1/C/XIII/CPGRAM/04/2018 dated 16.4.2018.
Annexure A16: Copy of the letter dated 10.4.2018.
Annexure A17: Copy of the second page of SSLC Book of the daughter Lima Sunny.
Annexure A18: Copy of the Driving License of the son, Antony Sunny.

Annexures filed by the respondents:

- Annexure R1: Form E dated 6.6.2012.
Annexure R2: Application dated 29.3.2012.