

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

**Original Application No.21/235/2018  
& MA No.145/2018 in OA No.235/2018**

**Date of Order: 02.07.2019**

Between:

E. Anuradha,  
D/o Late Krishnaiah  
Aged 43 Years, Occ: Household  
R/o C-21, Vikrampuri Colony  
Secunderabad 500009.

...Petitioner/Applicant

AND

1. Union of India  
Represented by its Principal Secretary  
Ministry of Defence  
New Delhi – 110 011.

2. Air Headquarters (Vayu Bhavan)  
Rep. by its DDPC  
New Delhi – 110 011.

3. The Director  
Jt. CDA (AF) Subroto Park  
New Delhi – 110 010.

4. Commanding Officer  
Navigation Training School, AF  
C/o Air Force Station, Begumpet  
New Bowenpally (Post)  
Secunderabad -500 011.

... Respondents

Counsel for the Applicant ... Mr. Uday Vir Singh Laur.  
Counsel for the Respondents ... Mr. M. Venkata Swamy, Addl. CGSC

**CORAM:**

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

**ORAL ORDER**

2. The OA is filed for not granting of family pension.
3. Applicant is the daughter of the deceased employee, who worked for the respondents organization as a Group D employee, and passed away on 10.2.2013 leaving behind the applicant and her two other sisters. Father of the applicant predeceased the mother in 1975. Other two sisters of applicant are married and settled. Applicant was married on 5.7.1993 and after a son was born, her husband deserted her in 2001. From then on, applicant has been staying with her mother. After demise of her mother, when she approached the respondents for family pension, it was advised to obtain the decree of divorce. Even on submission of the same, issued by the competent Court on 9.6.2014, as advised, family pension was not granted. Aggrieved, OA has been filed.
4. The contentions of the applicant are that her name was recorded as dependent in the respondents' records. Though she has been living away from her husband, who in fact remarried, she was not aware that, to obtain family pension, divorce has to be taken. The fact that she was dependent

on her late mother can be verified from the neighborhood since 2001. After the demise of her mother, she is in severe financial distress and is not in a position to take care of her minor child and herself. Rejection of her request for family pension is violation of Rule 54 of CCS (Pension) Rules, 1972. Similarly situated persons were granted family pension. There is no other legal heir. She has no property moveable or immoveable, to support herself. Applicant is the rightful claimant for family pension.

5. Respondents contest the claim of the applicant by filing reply to MA No.145/2018, on the ground that, as on the date of the death of her Mother, i.e., 10.2.2013, she was married and not dependent on the Mother. This is borne by the fact that she took divorce only on 9.6.2014. Besides, there is a delay of 352 days in filing the OA. The applicant has not explained the day to day delay. In this regard, he relies on the Judgement of the Principal Bench in OA No.4066/2012.

6. Heard both the counsel and perused the documents as well as the material papers submitted.

7. I) The primary condition for grant of family pension is that the applicant should be dependent on the deceased employee on the date of death. Applicant has asserted that her name has been recorded in the

respondents' records as being dependent on the deceased employee. Respondents have been silent on this submission. In fact, when a claim for family pension has been received it was for the respondents to inquire as to whether applicant was dependent on the ex-employee. Even close colleagues of the late employee would have let known the truth of the fact. Respondents have not made such an attempt. On the contrary when approached for family pension, she was asked to submit a divorce decree. Family pension is granted based on dependency and is not rejected purely based on marital status.

II) Besides, the cause of action, as recorded in the petition for divorce in O.P.No.69 of 2014 filed before the Family Court in Secunderabad, arose in 2001 when the husband of the applicant, deserted the applicant and his son. Based on this cause of action, divorce decree was issued on 9.6.2014. Once a competent Court has taken cognizance of the fact that the desertion of the applicant took place in 2001 and granted the divorce, the respondents need to respectfully accept the fact that the applicant, on desertion by her husband, was dependent on the late employee since 2001, as ardently prayed by the applicant. There can be no other better evidence than this fact. Respondents taking the date of divorce certificate into consideration, instead of appreciating the facts stated in the

OP No.69/2014, would tantamount to taking a very narrow view of the case. Taking divorce is a cumbersome and emotionally painful process which takes time. In the present case, applicant was tormented for dowry and physically harmed over the years. In such cases, victims move the courts slowly after the emotional wounds are healed or on being advised by well wishers for legal reasons, as seen in the present case. This does not mean that the victims were not living with their near and dear ones during the period of separation. Claiming that the date of divorce decree decides the dependency would be stretching the argument into the domain of irrationality. Facts and circumstances of each case have to be studied in detail to come to a conclusion. It is not known as to what prevented the respondents to verify as to whether the applicant was dependent on the deceased employee. Rather perplexing. If such an initiative was taken, the grievance would have been resolved years before.

III) To top it, Dept. of Pension and Pensioners Welfare, has at para 5 in OM dated 28.4.2011 has observed that the dependency of the widowed/divorced daughter on deceased employee at the time of death is not required, as under:

*“The matter has been considered in the Department  
in consultation with Department of Expenditure,*

*Ministry of Finance. It is hereby clarified that subject to fulfillment of other conditions laid down therein, the widowed/divorced/unmarried daughter of a Government Servant/pensioner, will be eligible for family pension with effect from the date of issue of respective orders irrespective of the date of death of the Government Servant/Pensioner. Consequently, financial benefits in such cases will accrue from the date of issue of respective order. The cases of dependent disabled siblings of the Government servants/pensioners would also be covered on the above lines."*

Thus, as can be seen from the above OM, the applicant is eligible for family pension irrespective of the date of the death of the ex-employee. Therefore, the objection raised by the respondents about dependency of the applicant on her mother, at the time of her death, does not hold good anymore.

IV) The applicant has submitted that there is no other legal heir of her mother and that she has no other source of income, nor does she have any immovable or movable property to depend upon. In the short reply filed in MA, the contentions have not been refuted.

V) Lastly, respondents asserted that the OA is barred by limitation since there is a delay of 352. The issue is in regard to Family Pension, which is a continuous cause of action. Not granting pension is a continuing wrong and it has to be heard, to do justice, if required. Tribunal draws

support of the observation of the Hon'ble Supreme Court in ***Union of India v. Tarsem Singh,(2008) 8 SCC 648***, relating to limitation aspect, wherein it was held as under:-

*“7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a **continuing wrong**. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury.*

The Hon'ble Supreme Court in **M.R.Gupta v. Union of India & Others**, (1995) 5 SCC 628, which relates to recurring cause of action, held as under:-

“Having heard both sides, we are satisfied that the Tribunal has missed the real point and overlooked the crux of the matter. The appellant's grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant's claim is found correct on merits, he would be entitled to be paid according to

the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant's claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action.

The Tribunal misdirected itself when it treated the appellant's claim as 'one time action' meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See *Thota China Subba Rao and Others vs. Mattapalli Raju and Others*, AIR 1950 Federal Court 1)."



Grant of Family Pension is a service related claim and not providing the said legitimate relief to the applicant, is a continuing source of injury.

Therefore, the objection raised by the respondents in regard to limitation holds no water. Further, OA 4066 of 2012 referred to by the respondents to support their contention is of no relevance, since facts and circumstances of the present case differ from the one cited. Hence, delay is condoned and MA is accordingly allowed.

**O.A.No.235/2018:**

VI) Thus, based on Rule laid down by Dept. of Pension and Pension Welfare cited supra and details of the cause of action recorded in OP 69/2014, applicant is eligible for Family Pension. The OA fully succeeds. The impugned order dated 17.2.2016 is quashed. Consequently, respondents are directed to consider as under:

- i) To grant family pension to the applicant from the date of death of her mother.
- ii) Arrears of pension are to be paid to the applicant with interest at prevailing GPF rate of interest for the period commencing from the date of death of the ex-employee till the date of payment.

- iii) Time allowed to implement is 3 months from the date of receipt of a certified copy of this order.
- iv) No order as to costs.

With the above directions, made in Para 7(VI), the OA is allowed.

**(B.V. SUDHAKAR)**  
**MEMBER (ADMN.)**

Dated, the 27<sup>th</sup> day of July, 2019

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