

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 69/2015

Reserved on: 29.07.2019
Pronounced on: 14.08.2019

Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhaya, Member (A)

Smt. Hemlata Sharma Daughter of Late Shri Bhanwar Lal Sharma, aged about 53 years, Resident of House No.1491. Ganga Bhawan, Kanwantiyon Ki Peepli, Mehro ka Rasta, Ramganj Bazar, Jaipur and pensioner of North Western Railway, Ajmer.

...Applicant.

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India, through General Manager, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
2. Union of India, through its Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners Welfare, Third Floor, Lok Nayak Bhawan, Khan Market, New Delhi.
3. Financial Advisor and Chief Accounts Officer, North Western Zone, North Western Railway, Near Jawahar Circle, Jagatpura, Jaipur.
4. Deputy Financial Advisor and Chief Accounts Officer (W&S), North Western Railway, Ajmer Division, Ajmer.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

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ORDER**Per: A.Mukhopadhaya, Member (A):**

The brief facts relating to this Original Application, (OA), are that the applicant, whose marriage was dissolved on 08.12.1980, came to reside with her parents thereafter. Her father, who had been an employee of the respondent Railways and was drawing pension as per rules from the respondent department, passed away on 04.04.1992 and thereafter her mother was allowed family pension till her death on 08.05.2007. The applicant contends that being the divorced daughter of the original pensioner, (her father), from the respondent department, she was eligible for grant of family pension after death of her mother, since, as per the agreement on stamp paper signed in the presence of witnesses, (Annexure A/3), her marriage stood dissolved from 08.12.1980 onwards. The applicant states that the respondents, on her application, allowed her family pension vide order dated 19.04.2010, (Annexure A/12), and once allowed, such pension cannot be stopped through any clarification/direction issued subsequently as such directions can only be given prospectively. For this reason, Department of Pension and Pensioners' Welfare, (DoP & PW), OM dated 18.09.2014, (Annexure A/2), directing the discontinuation of previously sanctioned family pensions like hers in the light of the subsequent clarification given vide the OM is unsustainable and should therefore be quashed and set aside; (Ground 5 (D) of OA

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refers). The respondents however have withdrawn the family pension earlier sanctioned and paid to her, (Annexure A/12), vide order dated 18.10.2014, (Annexure A/1), and have not restored the same despite her representation, (Annexure A/18), explaining the detailed factual position and her total financial dependence on her father since 1980. Aggrieved by this, the applicant has approached this Tribunal seeking the following relief:-

- (i). That the respondents be directed to restore family pension of the applicant from the month of October 2014 by quashing order dated 18.10.2014 qua the applicant along with the OM dated 18.09.2014 (Annexures A/1 and A/2) with all consequential benefits.
- (ii). That the respondents be further directed to release family pension of the applicant from October 2014 till payment along with interest at market rate with further direction to treat the applicant as dependent as well as divorcee since 1980 with all consequential benefits.
- (iii). Any other order, direction or relief which is deemed fit, just and proper under the facts and circumstances of the case be passed in favour of the applicant.
- (iv). The costs of this application be awarded.

2. In reply, the respondents contend that when the mother of the applicant expired on 08.05.2007 and she subsequently applied for family pension on 07.09.2007, she was not dependent on her mother as the family court granted her a decree of divorce only with effect from the date of passing of its order to the same effect, i.e. 04.05.2009. The respondents dispute the averment made by the applicant that her divorce took place in the year

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1980 and assert that any understanding reached between the applicant and her erstwhile husband regarding the supposed dissolution of their marriage on 08.12.1980 does not have legal sanction merely because it is written on stamp paper. This cannot be treated a legally valid order of divorce between the parties. While not contesting the averment sought to be proved by the family ration card, (Annexure A/5), that the applicant was resided with her father in 1991, (i.e. prior to this pensioner's death), the respondents contend that neither such residence nor the fact of divorced status from 08.12.1980 onwards, or indeed at the time of her father death in 1992, can be inferred from the entries in the ration card; (Annexure A/5). The respondents aver that following upon the clarification issued by DoP & PW OM No.1/13/09-P&PW (E) dated 18.09.2014, (Annexure A/2), the Railway Board also issued RBE No.109/2014 dated 30.09.2014, (Annexure A/17), adopting the DoP & PW clarification/instructions of 18.09.2014; (Annexure A/2). Thus it is clear that where a married daughter becomes divorced or widowed subsequent to the death of the original pensioner, she cannot be treated as his dependent family member and is therefore not eligible for family pension; (para 4(ii) of reply refers). Accordingly, while admitting that family pension, (Annexure A/12), was indeed sanctioned to the applicant **"as per the relevant instructions at that time"**, (para 4 (v) of reply refers), on the death of her mother as stated by the applicant, the respondents contend, (para 4(iv)

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of reply refers), that since she became ineligible for the same as per DoP & PW clarification vide OM dated 18.09.2014, (Annexure A/2), as adopted by the respondent Railways vide RBE No.109/2014 dated 30.09.2014, (Annexure A/17), the discontinuation of the applicant's family pension vide order dated 18.10.2014, (Annexure A/1), is wholly justified and as per rules and instructions on the subject. The respondents point out that as per provisions of the DoP & PW OM dated 18.09.2014, (Annexure A/2), adopted by the respondent Railways vide RBE No.109/2014 dated 30.09.2014 (Annexure A/17), no recovery has been made from the applicant and therefore the applicant should not have any grievance on this count. As regards the applicant's contention that family pension once sanctioned cannot be withdrawn subsequently consequent upon later clarification/direction, the respondents aver that even rights once accrued can be regulated by subsequent rules/regulations and that the clarification and direction given vide DoP & PW OM dated 18.09.2014, (Annexure A/2) is in fact the correction of an earlier mistake and is therefore just and legal; (para 5 (D) of reply refers).

3. Learned counsels for the applicant and the respondents were heard and the material available on record was perused. Counsels reiterated the points made in the OA and its reply respectively.

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4. In this case, it is undisputed that the decree of divorce passed by the learned family court, (Annexure A/11), specifically states that the applicant's marriage was dissolved on 04.05.2009 and therefore the applicant cannot be considered to be a divorced daughter of the deceased pensioner before that date. That having been said, it is also undisputed that the respondents did sanction family pension to the applicant vide their order of 19.04.2010, (Annexure A/12), with effect from 07.09.2007, (para 4 (v) of reply refers), **"as per the relevant instructions at that time"**. The respondents have argued that subsequent clarification/direction received in the matter and in particular as conveyed vide DoP & PW OM dated 18.09.2014, (Annexure A/2), as adopted by the respondent Railways vide RBE No.109/2014 dated 30.09.2014 (Annexure A/17), have subsequently disentitled the applicant for such pension, (para 4(v) of reply refers), and that since the clarification/direction has been applied to all cases where family pension had earlier been sanctioned to the daughters of original pensioners who had not been widowed/divorced before the death of the original pensioner, no injustice has been visited upon the applicant in particular and there has also been no violation of principles of natural justice on this account.

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5. Here, while the right and competence of the respondent authorities to frame policy and rules with regard to grant of family pension is not disputed, in our view, it becomes a different matter when such clarification/direction with very substantive adverse implications for affected persons such as the applicant are sought to be applied with retrospective effect to sanctions issued before such clarifications and directions. In such a case, if the clarification/instruction of DoP & PW OM dated 18.09.2014, (Annexure A/2), had been limited to the sanction of family pension after the date of the issue of the said clarification/direction, i.e. with prospective effect, then it could be argued that if the direction came to be applied uniformly across the category of widowed/divorced daughters of deceased pensioners, then no principle of natural justice would be violated. Such is not the case here.

6. In the present case, the clear direction in the DoP & PW OM dated 18.09.2014, (Annexure A/2), as adopted *in toto* by RBE No.109/2014 dated 30.09.2014, (Annexure A/17), is to cancel the very sanction which was admittedly issued as per rules prevalent at the time of sanction and therefore amounts to retrospective application of a subsequent direction affecting the sanction in favour of applicant adversely. The respondents have clearly admitted that the eligibility provision for sanction of family pension to a widowed/divorced daughter of original pensioners

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was changed in terms of DoP & PW OM dated 18.09.2014; (Annexure A/2 read with Annexure A/17). Consequently, they cannot term such change as the rectification of a 'mistake', (para 5 (D) of reply refers), especially after admitting clearly that the sanction was issued in 2010, (Annexure A/12), **"as per the relevant instructions at that time"**; (para 4 (v) of reply refers). Thus, given the sanction of family pension to the applicant on 19.04.2010, i.e. much prior to the issue of the clarification of 18.09.2014 changing the eligibility conditions for issue of such a sanction should not have been applied retrospectively, and that too without giving those affected, (like the applicant), an opportunity to represent against the same. In the circumstances, we find that the discontinuation of family pension to a person such as the applicant, as directed vide OM of DoP & PW dated 18.09.2014, (Annexure A/2), and adopted by the respondents vide RBE No.109/2014 dated 30.09.2014 (Annexure A/17), is innately violative of principles of natural justice as it is a settled proposition in law that any such change with retrospective effect made without even affording the parties affected adversely by the change an opportunity to represent against the same, runs contrary to the basic tenets of natural justice.

7. In view of the above mentioned findings, DoP & PW OM dated 18.09.2014, (Annexure A/2), and Railway Board circular RBE No.109/2014 dated 30.09.2014, (Annexure A/17), to the

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extent that they have been made retrospectively applicable to cases where family pension had been sanctioned prior to the issue and adoption of this clarification, are found to be violative of principles of natural justice and therefore, being *ultra vires* are quashed and set aside. We make it clear that the clarification/direction issued by the said DoP & PW OM dated 18.09.2014, (Annexure A/2), as well as Railway Board circular RBE No.109/2014 dated 30.09.2014 (Annexure A/17), can continue to apply to all cases of family pension sanctioned after the date of issue/adoption of the clarification/direction in question, but these will not apply to cases, like the present one, where family pension has *ipso facto* and admittedly been correctly sanctioned by the respondents as per relevant instructions in force at the time. Thus, in the present instance, since the date of divorce of the applicant has been accepted as being 04.05.2009 by the respondents themselves and they have accordingly sanctioned family pension to the applicant as a divorced daughter of the deceased original pensioner on 19.04.2010, (Annexure A/12), the sudden and arbitrary stoppage of such pension vide impugned order dated 18.10.2014, (Annexure A/1), qua the applicant becomes unsustainable in law.

8. In the result, this OA is allowed with the following directions:

- i) DoP & PW OM dated 18.09.2014, (Annexure A/2), and Railway Board circular RBE No.109/2014 dated 30.09.2014, (Annexure A/17), are partially quashed and set aside, in so far as it is sought to make them applicable to cases where family pension has been sanctioned prior to 18.09.2014 and 30.09.2014 respectively.
- ii) The impugned order dated 18.10.2014, (Annexure A/1) passed by the respondents is quashed and set aside qua the applicant and the respondents are directed to restore and release family pension to the applicant from October 2014 onwards along with all consequential benefits.

9. There will be no order on costs.

(A.Mukhopadhaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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