

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

No. OA 350/01485/2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member

MANIKA DAS

VS

UNION OF INDIA & ORS.

For the applicant : Ms. C. Malakar, counsel

For the respondents : Mr. S. Paul, counsel

Order on : 21.4.16

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard ld. Counsels for the parties.

3. During the course of hearing a question arose for consideration whether the applicant who got divorced after the death of her parents would be eligible for family pension in terms of Pension Rules, in a case where the applicant was married at the time of death of her father i.e. on 12.2.98. Her mother died on 8.11.2010 while she was receiving family pension as usual. The applicant got divorced on 16.8.12 i.e. after the death of her mother.

4. The following legal position could be noticed :

(i) As per Rule 54(6) of CCS (Pension) Rules the period for which family pension is payable shall be as follows:-

(i) in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;

(ii) in the case of a son, until he attains the age of twenty-five years; and

(iii) in the case of an unmarried daughter, until she attains the age of twenty-five years or until she gets married, whichever is earlier;

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## EXPLANATIONS -

(a) Deleted

(b) A daughter shall become ineligible for family pension under this sub-rule from the date she gets married.

(c) The family pension payable to such a son or a daughter or parents or siblings shall be stopped if he or she or they start earning his or her or their livelihood.

2(b) "family" in relation to a Government servant means -

(i) wife in the case of a male Government servant, or husband in the case of a female Government servant.

(ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(ii) On 30.8.04 Ministry of Personnel, Public Grievances and Pensions, Dept. Of Pension and Pensioners Welfare issued an OM on "Eligibility of divorced/widowed daughter for grant of family pension"

It envisaged infra :

"The undersigned is directed to say that as per clauses (ii) and (iii) of sub-rule (6) of Rule 54 of the C.C.S. (Pension) Rules, 1972 read with clause (b) of Para 7.2 of this Department's O.M. No.45/86/97-P&PW (A)-Part I dated the 27th October 1997, son/daughter including widowed/divorced daughter shall be eligible for grant of family pension till he/she attains the age of 25 years or up to the date of his/her marriage/remarriage, whichever is earlier (subject to income criterion to be notified separately). The income criterion has been laid down in this Department's O.M. No.45/51/97-P&PW (E) dated the 5th March 1998 according to which, to be eligible for family pension, a son/daughter (including widowed/divorced daughter) shall not have an income exceeding Rs.2550 per month from employment in Government, the private sector, self employment etc. Further orders were issued vide this Department's O.M. No.45/51/97-P&PW (E)(Vol.II) dated 25th July 2001 regarding eligibility of disabled divorced/widowed daughter for family pension for life subject to conditions specified therein.

2. Government has received representations for removing the condition of age limit in favour of divorced/widowed daughter so that they become eligible for family pension even after attaining the age limit of 25 years. The matter has been under consideration in this Department for sometime. In consultation with the Ministry of Finance, Department of Expenditure and the Ministry of Law and Justice, Department of Legal Affairs etc., it has now been decided that there will be no age restriction in the case of the 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 parental 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."

The OM did not specify whether such daughter had to be an "unmarried" daughter as on the date of death.

(iii) Further on 11.9.13 a clarificatory OM was introduced which clarified who a dependent child would be :

*"As indicated in Rule 54(8) of the CCS (Pension) Rules, 1972, the turn of unmarried children below 25 years of age comes after the death or remarriage of their mother/father, i.e. the pensioner and his/her spouse - Thereafter, the family pension is payable to the disabled children for life and then to the unmarried/widowed/divorced daughters above the age of 25 years.*

4. It is clarified that the family pension is payable to the children as they are considered to be dependent on the Government servant/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 thereon is considered to be dependent on his/her parents. Therefore, only those children who are dependent and meet other conditions of eligibility for family pension at the time of death of the Government servant or his/her spouse, whichever is later, are eligible for family pension. If two or more children are eligible for family Pension at that time, family pension will be payable to each child on his/her turn provided he/she is still eligible for family pension when the turn comes. Similarly, 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.

5. As regards opening of old cases, a daughter if eligible, as explained in the preceding paragraph, may be granted family pension with effect from 30th August, 2004. The position is illustrated through an example. Shri A, a pensioner, died in 1986. He was survived by his wife, Smt. B, a son Shri C and a daughter, Kumari D, the daughter being the younger. Kumari D married in 1990 and got widowed in 1996. Smt. B died in 2001. Thereafter, Shri C was getting family pension, being disabled, and died in 2003. Thereafter, the family pension was stopped as Kumari D was not eligible for it at that time. She applied for family pension on the basis of O.M., dated 30th August, 2004. Since she was a widow and had no independent source of income at the time of death of her mother and on the date her turn came, she may be granted family pension. The family pension will continue only till she remarries or starts earning her livelihood equal to or more than the sum of minimum family pension and dearness relief thereon.

6. This is only a clarification and the entitlement of widowed/divorced daughters would continue to be determined in terms of OM, dated 25/30th August, 2004, read with OM, dated 28.4.2011."

A bare perusal of the circular would reveal that any child not earning more than the minimum of family pension and DR is considered to be dependent of her parents, and family pension to a widowed daughter is payable if she fulfils the condition of not earning more than minimum of family pension plus DR on the date of her turn to receive family pension comes.

5. Ld. Counsel for the applicant would strenuously urge that the applicant as divorced daughter would become eligible for family pension by virtue of OM

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dt. 30.8.04 and OM dt. 11.9.13 with its illustration, as she got divorced after the death of her father. She submitted that the respondents ousted her claim on a wrong premise with a hyper technical view.

6. Per contra Id. Counsel for the respondents, dispelling the claim would vehemently oppose the prayer on the ground that in order to avail the benefit of the OM (supra) the daughter had to be dependent on the father as on the date of his death i.e. either she had to be an unmarried or a divorcee or a widow. Id. Counsel vociferously submitted that she had to qualify the basic provision of Rule 54 (ibid). The later circular only introduced certain provisions for the unmarried daughters who got married and divorced/widowed in the meantime.

7. In **Soleman Bibi -vs- E.I.Rly. [AIR 1933 Cal 358]** the Hon'ble Court observed as under -

"The comment which occurs to me is as follows: a daughter undoubtedly acquires a new relationship on marriage. She does not however lose the old relationship; she remains a daughter. Once a daughter always a daughter: qua relationship she is a daughter before, during and after marriage. On the other hand the legislature had attached a qualification or condition that in order to participate a female child must not only be a daughter, but she must be an "unmarried" daughter. The question is what is the meaning of that qualification. Does it exclude daughters once, but no longer, married? I think not. It appears to me that the important portion of the context to read in connexion with the definition is the operative part of Section 8 which provides for one payment to be distributed at a special time or period-the death of the employee-among particular persons. According to the English authorities and also I think in common conversation, when "unmarried" forms a qualification in the description of a person who is to receive a sum of money at a definite time or period, the meaning "not married" appears to be appropriate: see Leshingham Trust 24 Ch. D. 703 and Jarman on Wills in particular at p. 1252. For these reasons I agree with the decision in 13 Lah. 228 (1) and construe the expression "unmarried daughter" in Section 2, 1(d) of the Act as including widowed daughter."

(emphasis supplied)

Therefore, if the term "unmarried daughter" could include "widowed daughter" as decided in **Soleman Bibi** (supra), there is no sufficient or good reasons why a "divorced daughter" who had broken all her ties with her husband and returned back to her parents, who could even legally re-marry, would not be considered as a "non married" person and be considered as a dependent of the deceased employee.

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Further, it would be noted that the Pension Rules debar family pension to a daughter who is married of prior to attaining the age of 25 whereas unemployed married sons are not so debarred i.e. even a married son if unemployed, is entitled to family pension till he attained 25 years. Therefore the rules clearly demonstrate and propagate gender discrimination.

8. ***In Savita (Ms) & Anr. -vs- Union of India [1996 (2) SCC 380]***, the Hon'ble Apex Court considered the question of gender discrimination by the Railways in respect of the benefits to be given to the dependent after the death of the deceased employee and struck down the circular letter of the Railway Board where married daughters were disentitled to have allotment of Railway quarters after the death of the Railway employee in harness.

9. ***In Valsamma Paul (Mrs.) -vs- Cochin University & Ors. [1996 (3) SCC 545]***, the Hon'ble Apex Court made the following observations :

*"All forms of discrimination on grounds of gender is violative of fundamental freedoms and human rights. Convention for Elimination of all forms of Discrimination Against Women (for short, "CEDAW") was ratified by the U.N.O. on December 18, 1979 and the Government of India had ratified as an active participant on June 19, 1993 acceded to CEDAW and reiterated that discrimination against women violates the principles of equality of rights and respect for human dignity and it is an obstacle to the participation on equal terms with men in the political, social, economic and cultural life of their country; it hampers the growth of the personality from society and family, making more difficult for the full development of potentialities of women in the service of the respective countries and of humanity. When the respondents do not deprive widowed sons or divorced."*

10. It could be noted that the circulars of 30.8.04 and 11.9.13 are conspicuously silent about the daughters who were married as on the date of death of the employee but were widowed/divorced after the death of their mother, the recipient of family pension, and have come back to the house of the deceased after their divorce or widowhood. The arguments offered by the respondents that a daughter unless unmarried/widowed/divorced as on the date of death of the employee could not be considered as a dependent and hence ineligible to succeed the widow mother as family pensioner is illogical and fallacious in as much as a daughter widowed/divorced as on the date of death and a daughter widowed/divorced after the death are equally distressed and helpless. Both have to come back to their parental home for sustenance.

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The 11.9.13 circular is explicit that after death of the father and widow mother family pension is payable to the disabled children for life and then to unmarried/widowed/divorced daughter above the age of 25 years. Therefore, if the object sought to be achieved by introduction of the circular is to provide a succour to the widowed/divorced daughters above the age of 25 years after the death of their parents where as a qualification deprives a daughter widowed/divorced after the death of the parents, from earning family pension, there is no reasonable nexus of the qualification with the object sought to be achieved. It would result in discriminating between the daughters divorced/widowed as on the date of death of the employee vis-a-vis those divorced/widowed after the death of the parents, that too without any justification or basis.

11. Furthermore, when the Pension Rules did not provide for Family Pension to widowed or divorced daughters, the clarificatory circulars of 30.8.04 and 11.9.13 to grant relief to widowed or divorced daughters in addition to unmarried daughters ought to have been uniformly applied. Excluding the married daughters who got widowed or divorced later on and came back to the family of the deceased from the ambit of such circulars, could not be countenanced. The respondents ought not to have resorted to a macro compartmentalisation of widowed/divorced daughters on the basis of a micro distinction that is date of divorce/widowhood and discriminate between widowed/divorced daughters on such.

12. The reasoning contrived by the respondents that the same daughter who was widowed or divorced during the lifetime of the employee or his spouse would be his dependent, whereas if widowed/divorced after the death of her parents would not be a dependent, is ridiculous and outlandish as after the death of her parents she would be more distressed having no one to fall back upon. The reason is enough to shock every nerve. It would leave anyone in a state of quandary to visualise the manner in which discrimination is being meted out to these helpless daughters of our country who have lost her parents, husband and may not have any earnings.

13. In my considered opinion, the date of divorce or widowhood cannot be the determining factor, it is the state or condition which should have a bearing,

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i.e. whether such divorced/widowed daughter is distressed or she is earning more than minimum of family pension plus DR as the condition of eligibility the circular dt. 11.9.13 would envisage.

14. No law has been cited to demonstrate that once family pension to the widow was stopped due to her death, it could not be restarted in favour of any other legal heir following an interregnum upon his/her acquiring eligibility subsequent to her death.

15. In this connection, it would also be useful to quote the Ministry of Personnel, Public Grievances & Pension circular dated 28.4.11 : (extracted with supplied emphasis for clarity)

#### **OFFICE MEMORANDUM**

**Subject: Extension of scope of family pension to widowed/divorced/unmarried daughter and dependent disabled siblings of Central Government servants/pensioners-Clarifications-reg.**

The undersigned is directed to state that as per the existing provisions of CCS (Pension) Rules, 1972 as amended from time to time, the son/daughter of a Government servant/Pensioner is eligible for family pension upto the date of his/her marriage/remarriage or till he/she starts earning or till the age 25 years, whichever is earlier. Further, a disabled son/daughter of a Government servant/Pensioner suffering from any disorder or disability of mind, including mentally retarded, or who is physically crippled or disabled, is eligible for family pension for life subject to the fulfilment of certain conditions. Subsequently orders were issued vide this Department's O.M.No.45/86/97-P&PW(A) dt.27.10.97 and No.1/19/03-P&PW(E) dt.30.8.2004 making divorced/widowed daughters eligible for family pension even after attaining the age limit of 25 years subject to the fulfilment of certain conditions. It was subsequently clarified vide this department's O.M.No.1/19/03-P&PW(E) dt. 11.10.2006 that family pension to widowed/divorced daughters is admissible irrespective of the fact that the divorce/Widowhood takes place after attaining the age of 25 years or before.

2. Further, orders have been issued vide this Department's O.M.No.1/19/03-P&PW(E) dt. 6th September, 2007, whereby an unmarried daughter of a Government servant/Pensioner beyond 25 years of age, has been made eligible for family pension at par with the widowed/divorced daughter subject to fulfilment of certain conditions. However, family pension to the widowed/divorced/unmarried daughters shall be payable in order of their date of birth and the younger of them shall not be eligible for family pension unless the next above has become ineligible for grant of family pension. Further the family pension to widowed/divorced/unmarried daughters above the age of 25 years shall be payable only after the other eligible children below the age of 25 years have ceased to be eligible to receive family pension and that there is no disabled child to receive the family pension.

3. Subsequently, orders have been issued vide this Department's O.M.No.1/15/2008-P&PW(E) dt. 17.8.2009 whereby dependent disabled siblings of a Government servant/Pensioner have been made eligible for family pension for life subject to the fulfilment of certain conditions.

4. Representations have been received in this Department from various quarters (i.e. Pensioners associations, etc) to the effect that the claims for family pension of widowed/divorced/unmarried daughters and dependent disabled siblings are not being entertained by certain Ministries/Departments on the plea that their names do not appear in the details of family members submitted by the Government servant/pensioner to the head of office from where he/she had retired besides, in cases where a Government servant/pensioners had expired prior to the issue of above referred orders by this Department, the claims of widowed/divorced/unmarried daughters, etc for family pension are not being entertained by Ministries/Departments on the plea that they were not eligible for family pension at the time of retirement/death of the Government servant or death of the pensioner. This Department has been requested for issue of appropriate clarificatory orders in the matter so as to settle the family pension claims of the aggrieved widowed/divorced/unmarried daughters, etc, of the government servants/Pensioners.

5. The matter has been considered in this Department in consultation with Department of Expenditure, Ministry of Finance. It is hereby clarified that subject to fulfilment 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 orders. The cases of dependent disabled siblings of the Government servants/Pensioners would also be covered on the above lines.

6. All Ministries/Departments are requested kindly to settle the family pension claims of widowed/divorced/unmarried daughters and dependent disabled siblings accordingly on priority. They are also requested to bring these orders to the notice of their attached/subordinate organizations for compliance.

7. This issues with the concurrence of the Ministry of Finance, Department of Expenditure vide their U.O.No.97/EV/2011 dated 06.04.2011.

8. In so far as their applicability to the personnel of Indian audit and accounts department is concerned, these orders are being issued in consultation with the C & AG of India vide their U.O.No.65-Audit (Rules)/14-2010 dt. 26.4.2011.

9. Hindi version will follow."

A cursory glance at the circular would reveal no discrimination between daughters widowed/divorced prior to the death of employee/pensioners or after their death. Therefore, it would equally apply to such daughters who are widowed/divorced after the death of employee/pensioner, as in the present case.



16. In view of the foregoing discussions the respondents are directed to apply the circulars dated 28.4.11 and 11.9.13 supra to the present applicant to disburse family pension to her treating her as a dependent daughter within two months from the date of communication of this order.

17. Accordingly the OA would stand allowed.

18. No order as to costs.

*B. Banerjee*  
(BIDISHA BANERJEE)  
MEMBER (J)

In