

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. OA 350/01025/2015

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

MAMATA GHOSH

VS

UNION OF INDIA & ORS.

For the applicant : Mr.M.K.Roychoudhury, counsel

For the respondents : Mr.P.Pramanik, counsel

Order on : 4.5.16.

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. The applicant is aggrieved by an order dated 6.4.15 whereby and whereunder, the Sr. Administrative Officer II, for Sr. Quality Assurance Officer intimated to the applicant, a divorced daughter that her claim for family pension that was forwarded to PC DA (P) Allahabad has been not considered as her date of divorce (29.3.11) fell after the date of death of her parents viz. 2.11.1976 and 15.1.2000 respectively.

3. Admittedly, the applicant married one Dipak Kumar Dutta on 1.12.91, long after the death of her father (2.11.1976). A Matrimonial Suit instituted in the year 1996 for dissolution of the marriage was ultimately decreed on 29.3.11, after the death of her mother on 15.1.2000. Therefore neither unmarried nor divorced/widowed as on the date of death of the employee or that of her family pensioner mother, she was denied family pension. The applicant relied upon the OM issued by the Govt. of India, Department of Pension & P.W., issued on 11.10.2006, but the said OM refers to

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disabled/divorced daughter and hence not applicable to the present factual matrix.

4. During the course of hearing Id. Counsel for the applicant further relied upon OM dated 11.9.13 which would read as under :

OFFICE MEMORANDUM

Sub: Eligibility of widowed/divorced daughters for grant of family pension - clarification regarding.

Provision for grant of family pension to a widowed/divorced daughter beyond the age of 25 years has been made vide OM dated 30.08.2004. This provision has been included in clause (iii) of sub-rule 54 (6) of the CCS (Pension), Rules, 1972. For settlement of old cases, it was clarified, vide OM dated 28.04.2011, that the family pension may be granted to eligible widowed /divorced daughters with effect from 30.08.2004, in case the death of the Govt. Servant/pensioner occurred before this date.

2. This Department has been receiving communications from various Ministries/ Departments seeking clarification regarding eligibility of a daughter who became widowed/divorced after the death of the employee/pensioner.

3. 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 fulfils 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

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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.

(D.K. Solanki)
Under Secretary to the
Government of India"

5. Per contra, ld. Counsel for the respondents repelling the claim would submit that in order to be eligible to receive family pension, the widowed or divorced daughter had to be unmarried as on the date of death of the employee or widowed/divorced as on the date of death of her family pensioner mother and not otherwise.

6. However, no such stipulation, neither express nor implied, could be deciphered from the OM dated 11.9.13 supra.

7. More so, regardless of the fact that the daughter got divorced or widowed prior to the date of death of employee or his spouse or after their death, ^{she} in both the cases would be on the equal footing being equally helpless and distressed and unless employed and relatively well settled, she would be bound to come back to her parental home and be dependent on the parents or their dependents for her sustenance. In such circumstance, even by phantasmagorical thoughts no such discrimination on the basis of date of widowhood or divorce could either be comprehended or countenanced. The consideration should solely be on the basis of ^{her} ~~their~~ financial condition and not date of divorce or widowhood.

8. That apart if the object sought to be achieved by introduction of the OM was to provide succour to the divorced or widowed daughters attaining such status after the death of the employee but during the lifetime of the family pensioner mother, while a clarification deprived the daughters widowed or divorced after the death of the family pensioner, there doesn't seem to be any nexus between the clarification and the object sought to be achieved.

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9. In such view of the matter, I am of the considered opinion that the OM dt. 11.9.13 should equally apply to a daughter who is widowed or divorced after the death of the family pensioner and long after the death of the employee, and accordingly such a daughter should be granted family pension that she would have enjoyed or would have been entitled to if divorced/widowed during the lifetime of the employee or his spouse.

10. Therefore the respondents are directed to apply the provisions of OM dated 11.9.13 to the present applicant and order accordingly within two months from the date of receipt of the copy of this order.

11. The OA is disposed of. No order is passed as to costs.

(BIDISHA BANERJEE)
MEMBER (J)

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