CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

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ORIGINAL APPLICATION NO.060/00685/2018
Chandigarh, this the 28th day of November, 2019
(Reserved on 30.10.2019)

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CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MR. PRADEEP KUMAR, MEMBER (A)

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Smt. Parkash aged about 62 years w/o Late Sh. Sher Singh Chauhan r/o H. No. 1438/11, Sector 29-B, Chandigarh.

....Applicant

(**Present**: Mr. Ashok Bhardwaj, Advocate)

Versus

1. Union of India, Ministry of Personnel, Public Grievances and Pensions, New Delhi through its Secretary.
2. NCC Directorate, Punjab, Haryana, Himachal Pradesh and Chandigarh, 5th Floor, Kendriya Sadan, Sector 9, Chandigarh.

..... Respondents

(**Present**: Mr. Sanjay Goyal, Advocate)

ORDER

SANJEEV KAUSHIK, MEMBER (J)

1. Applicant has challenged the order dated 14.03.2018 (Annexure A-8) whereby her claim for grant of family pension on demise of her husband has been rejected. She has further sought issuance of a direction to Respondent No. 2 to release the family pension and arrears thereof along with interest @ 18% p.a. for delayed payment.

2. The undisputed facts which led to the filing of this O.A are that Sher Singh Chauhan (now deceased) and Smt. Parkash got married as per Hindu Rites on 29.11.1978 and out of this wedlock two daughters namely Pinki was born on 21.01.1980 and Rajni was born on 24.05.1985, and thereafter a son namely Anoop Chauhan was born on 14.11.1989. Applicant filed a petition u/s 125 Cr. P.C. for grant of

maintenance in the Court of Judicial Magistrate, Gurgaon on 08.08.1989, which was finally allowed vide order dated 22.08.1997 and maintenance of Rs.500/- to the applicant and Rs.200/- each to the three children were allowed. On the other hand, husband of the applicant filed a petition u/s 13 of the Hindu Marriage Act, 1955 for dissolution of marriage and he obtained ex-parte divorce from the applicant vide judgment and decree dated 08.03.1990, passed by District Judge Narnaul.

3. After the death of her husband, the applicant moved a representation for grant of family pension, which has been turned down by the respondents vide impugned order dated 14.03.2018 (Annexure A-8). Hence the O.A.

4. The respondents filed written statement wherein they admitted the factual accuracy. However, it is submitted that since the marriage of the applicant and her late husband was dissolved vide decree and judgment dated 08.03.1990, under Section 13 of Hindu Marriage Act, 1955, therefore, she is not entitled to family pension as per Rule 54 sub Rule 11-A and 11-B of the CCS (Pension) Rules, 1972.

5. We have heard learned counsel for the parties.

6. Mr. Ashok Bhardwaj, learned counsel for the applicant, though did not deny the rule position, however, cited three judgments of the Hon'ble Supreme Court in the cases of **Smt. Rohtash Singh Vs. Ramendri**, 2000 AIR (SC) 952, **Dr. Swapan Kumar Banerjee Vs. The State of West Bengal & Another**, 2019 AIR (SC) 4748, **Captain Ramesh Chander Kaushal Vs. Mrs Veena Kaushal and Others**, 1978 (4) SCC 70, wherein a divorcee has been allowed

maintenance allowance after dissolution of marriage. On the basis of these judicial pronouncements, he submitted that the claim of the applicant be settled in view thereof. On the other hand, Mr. Sanjay Goyal, learned counsel for the respondents relied upon the rule formulation in support of the impugned order rejecting grant of family pension to the applicant.

7. We have given thoughtful consideration to the matter and perused the pleadings on record.

8. Apparently, in terms of Sub- Rule 11-A and 11-B of Rule 54 of CCS (Pension) Rules, 1972 , the applicant is not entitled to grant of family pension, therefore, her claim cannot be accepted. As far as judgments cited by the applicant in the cases of Rohtash Singh (supra), Captain Ramesh Chander (supra) and Dr. Swapan Kumar Banerjee (supra) are concerned, we are afraid, these will not render any assistance to the applicant in this case. Rule makers have themselves considered the cases of grant of family pension to a divorcee and a judicially separated wife, and have not allowed this benefit to a divorcee. There is a distinction between divorce and judicial separation. A decree for divorce has the effect of dissolving the marriage and puts an end to the marriage ties and the separation is absolute and final. A decree for judicial separation is one for legal separation and does not itself results in dissolution of the marriage, though it may furnish a ground for divorce where cohabitation has not been resumed for a period of one year after the passing of the same. It is in affirmance of the marriage and has the effect of suspending as it were, the matrimonial and certain mutual rights and obligation of

the parties. The separation is not absolute and final and the marriage ties continue to subsist. There is always a locus poentientiae and the parties may at any time resume cohabitation.

9. In the wake of the above, it is clear that in judicial separation there are chances that the couple can resume cohabitation, but in divorce the marriage is absolutely dissolved and they have no relation of husband and wife. Thus, the analogy which learned counsel has tried to get from the relied upon judgments cannot be accepted. Section 125 of the Criminal Procedure Code has provisions regarding grant of maintenance allowance in matrimonial cases. Similar provisions are found in personal laws which lay down the right of maintenance in the case of judicial separation only. Section 125 (2) Cr. P.C. stipulates that no wife shall be entitled to receive the allowances for maintenance from her husband if without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

10. In the present case, a decree of dissolution of marriage has been passed which has attained finality, as the learned counsel for the applicant fails to produce any order setting aside that decree. Thus, the applicant was living separately from her husband during his life time. In these circumstances and in view of clear rule position on the issue, the prayer of the applicant for grant of family pension cannot be accepted. The O.A. is dismissed being devoid of any merit. No costs

(PRADEEP KUMAR)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)
Dated: 28.11.2019

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