

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 43 of 2018

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)

Benguli @ Benga Sahu @ Rout, aged about 57 years, D/o Late Nrusingha Rout, Vill-Ramchandrapur, PO-Seragadamukundapur, PS-Jenapur, Dist-Jajpur.

.....Applicant

VERSUS

1. Union of India, represented through General Manager, East Coast Railway, E.Co.R.Sadan, Chandrasekharpur, Bhubaneswar, Dist-Khurda-752017.
2. Senior Divisional Personnel Officer, East Coast Railway, Khurda road Division, At/PO-Jatni, dist-Khurda-752050.
3. Senior Divisional Engineer/Co-ordination, East Coast Railway, Khurda Road Division, At/PO-Jatni, dist-Khurda-752050.

.....Respondents.

For the applicant : Mr.N.R.Routray, counsel

For the respondents: Mr.M.B.K.Rao, counsel

Heard & reserved on : 26.9.2019

Order on : 18.10.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

In this case, the applicant is the daughter of Late Nrusingha Rout, who was a pensioner under the Railway-respondents. It is claimed in the OA that the applicant is staying in the house of her father since 1991, when her father was working under the respondents. He retired from service on 31.1.2001 and he was a pensioner till his death on 25.3.2016. The applicant and her husband filed the Civil Proceeding No. 131/2016 for divorce on mutual consent under section 13B of the Hindu Marriage Act, 1955 and vide order dated 27.4.2017 (Ann-A/7), the decree of divorce was issued dissolving the marriage between the applicant and her husband. Thereafter, on 5.6.2017 (Ann-A/8), the applicant submitted an application for family pension in her favour by citing the Railway Board circular RBE No. 116/2007 for grant of family pension to unmarried/ widowed/divorced daughters of the Railway employees. When no decision was taken by the respondents after one reminder to the

respondents, the applicant filed the OA No. 523/17 which was disposed of vide order dated 13.9.2017 (Ann-A/10) directing the respondents to consider and dispose of the representation dated 5.6.2017 of the applicant regarding sanction of family pension.

2. Thereafter, the respondent no.2 passed the reasoned order dated 3.1.2018 (Ann- A/11), rejecting the case of the applicant. Being aggrieved by this order, the present OA has been filed by the applicant seeking the following reliefs:-

- “(i) To quash the reasoned and detailed order dtd. 3.1.2018 under Ann. A/11.
- (ii) And to direct the Respondents to grant family pension in favour of the applicant w.e.f. April, 2016 and release the arrears.

And pass any other order as this Hon’ble Tribunal deems fit and proper in the interest of justice.

And for which act of your kindness the applicant as in duty bound shall every pray.”

3. The grounds advanced by the applicant in favour of the OA are that the applicant was living with her father since 20.4.1991, when she started living separately from her husband. It is also stated that the applicant has got her Aadhar Card and Voter ID card in which there was recording of her father’s name with no recording of her husband’s name. Other ground in the OA is that the applicant, being a divorced daughter, is eligible for the family pension after death of her father as per the RBE No. 116/2007. It is further stated in the OA that the RBE No. 102/2017 is not applicable retrospectively.

4. The Counter filed by the respondents opposed the OA mainly on the following grounds:-

(i) The reasoned order dated 3.1.2018 has been passed declining the prayer of the applicant for family pension.

(ii) In the Legal Heir certificate dated 22.11.2016 (Ann –A/3), the applicant has been shown as a legal heir and her status has been shown as ‘married’. She has not been shown as a dependent of the deceased railway employee.

(iii) The Civil Proceeding for mutual divorce between the applicant and her husband was filed on 24.6.2016 which was after death of the applicant’s father on 25.3.2016. Hence, as per the RBE No. 102/2017, the applicant will not be entitled for family pension.

(iv) The RBE No. 116/2007 relied upon by the applicant is inapplicable to the case of the applicant who has not claimed the family pension as unmarried daughter.

5. Rejoinder has been filed by the applicant enclosing copy of the documents like job card under the N.R.E.G.S. scheme, Ration card, O.A.P. card, BPL card etc. in which the applicant has been recorded as the daughter of Late Nrusingha Rout. It is stated that although at Annexure-R/1 and R/2, the applicant's father had shown the name of his wife and sons, but not the applicant's name, but the Legal Heir Certificate (Ann-3) shows the name of the applicant as his daughter, which is not disputed. It is stated that the RBE No. 102/2017 is not applicable to the applicant's case retrospectively as the cause of the applicant has arisen after death of her father on 26.3.2016 prior to issue of the RBE No. 102/2017.

6. Heard learned counsel for the applicant. He submitted that the RBE No. 102/2017 will not be applicable to the applicant's case since when she filed the application for family pension after death of her father, the circular RBE No. 116/2007 was in force and the RBE No. 102/2017 had not been issued. He also stressed on the point that the fact that the applicant was the daughter of the deceased railway employee is not disputed and that the documents like voter id card show that the applicant was staying with her father prior to her divorce. He also filed a written note of argument enclosing a copy of the RBE No. 81/1998, which shows that the family pension was payable to the divorced daughters and by RBE No. 116/2007, family pension was payable to the divorced daughters beyond the age of 25 years after other eligible children below the age of 25 have ceased to be eligible for the family pension.

7. Heard learned counsel for the respondents. He submitted that the applicant's father retired from service in the year 2001 and he died in 2016. It is also submitted that the applicant's father had furnished an affidavit to the respondents, copy of which has been enclosed at Annexure-R/2 of the Counter, in which he had given the details of his family and there was no mention about the applicant in the said affidavit. It was argued that had the contention of the applicant that she was dependent on her father, then her name would have been mentioned in the affidavit at Annexure-R/2 submitted by the applicant's father to the respondents. Learned counsel for the respondents further submitted that the RBE No. 116/2007 was applicable for the unmarried daughters, not for divorced daughters. It was argued that there is no challenge to the RBE No. 102/2017 in this OA, for which, it would be applicable to the present OA.

8. The applicant's counsel in reply, opposed the arguments of the respondents' counsel and submitted that as stated in the RBE No. 116/2007, the family pension to the divorced daughter was payable as per the circular issued in the year 2004, which has been referred in the RBE No. 116/2007

(Annexure-A/6). It was further submitted by the respondents' counsel that the reference to the circular of the year 2004 for family pension was the circular of the DOPT and no document has been furnished in the OA to show that such circular of the DOPT has been adopted by the Railways. It was submitted that prior to the issue of the RBE No. 102/2017, the family pension was payable in case the divorce was decreed by the competent Court.

9. I have considered the submissions of the learned counsels for both the parties as well as the pleadings available on record. As stipulated in the RBE 102/2017 dated 23.8.2017 (Annexure-R/3 to the Counter), the OM dated 19.7.2017 of the Department of Pension and Pensioners' Welfare (in short DOPW) was adopted by the Railway Board. It is stated that the corresponding to the DOPW OM dated 30.8.2004 referred in the OM dated 19.7.2017 is the Railway Board's instructions dated 16.3.2005. As per the DOPW OM dated 30.8.2004, provision was made for payment of family pension to the divorced daughter beyond the age of 25 years. Clearly, the Railway Board has adopted the OM dated 30.8.2004 vide the Railway Board circular dated 16.3.2005, providing for payment of family pension to the divorced daughters beyond the age of 25. The OM dated 19.7.2017 also referred to the OM dated 11.9.2013 of the DOPW, in which it was stipulated that the family pension was payable to the children if they are dependent on the government servant/pensioner and if they satisfy other eligibility conditions (vide para 3 of the Annexure-R/3). It is stated in the RBE No. 102/2017 that the corresponding to the DOPW OM dated 11.9.2013 is the Railway Board circular dated 26.9.2013 (Annexure-R/3), which specifies the same conditions for the Railway servants.

10. The DOPT OM dated 19.7.2017, which has been adopted by the Railway Board in the RBE No. 102/2017 states as under:-

"3. It was clarified, vide this department Office Memorandum of even number, dated 11th September, 2013, 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.

4. It was clarified that a daughter if eligible, as explained in the preceding paragraph, may be granted family pension provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents and still on the date her turn to receive family pension comes. Accordingly, divorced daughters who fulfil other conditions are eligible for family pension if a decree of divorce had been issued by the competent court during the life time of at least one of the parents.

5. This department has been receiving grievances from various quarters that the divorce proceedings are a long drawn procedure which take many years

before attaining finality. There are many cases in which the divorce proceedings of a daughter of a Government employee/pensioner had been instituted in the competent court during the life time of one or both of them but none of them was alive by the time the decree of divorce was granted by the competent authority.

6. The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to grant family pension to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the life-time of the employee/pensioner or his/her spouse but divorce took place after their death – provided the claimant fulfils all other conditions for grant of family pension under rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce.”

11. Learned counsel for the applicant argued vehemently that the RBE No. 102/2017 was valid from 19.7.2017, which is after the cause of action arose for the applicant since her father expired on 25.3.2016 (Annexure-A/2) and hence, the RBE No. 102/2017 is not applicable to the applicant’s case as it does not have retrospective application. Same averment is made by the applicant vide para 5 and 6 of the Rejoinder. There cannot be any dispute about such contention of the applicant, since the cause of action in this case had arisen prior to issue of the RBE No. 102/2017 and there is nothing in the said circular to state that it has retrospective application.

12. However, as stated in para 3 and 4 of the DOPW OM dated 19.7.2017, which have been extracted in para 10 above, prior to 19.7.2017, “divorced daughters who fulfil other conditions are eligible for family pension if a decree of divorce had been issued by the competent court during life time of at least one of the parents.” These provisions, which were valid prior to issue of the RBE No. 102/2017, were relaxed by virtue of the OM dated 19.7.2017 with stipulation that the family pension to divorced daughter is admissible if the divorce proceedings had been filed in a competent court during life time of the employee/pensioner or his/her spouse, but divorce was ordered by the court subsequently. Prior to 19.7.2017, the requirement for eligibility for family pension for a divorced daughter was that the decree of divorce should have been issued by the court during life time of one of the parent in accordance with the DOPW OM dated 11.9.2013, which was adopted by the Railway Board in their circular dated 26.9.2013 (as stated in the page 1 of the RBE No. 102/2017 at Annexure-R/3). The applicant is, therefore, required to demonstrate that she was eligible for family pension as per the provisions of the above instructions of the DOPT OM dated 11.9.2013/Railway Board circular dated 26.9.2013 as mentioned in para 3 and 4 of the OM dated 19.7.2017.

13. In the case of the applicant, her father did not declare her to be one of his family members at the time of his superannuation in the year 2001 as the documents at Annexure R/1 and R/2 did not reflect her name. It is also an

admitted fact that her divorce case was filed by the applicant and her ex-husband before the competent court on 24.6.2016 as mentioned in para 3 of the judgment of the family court dated 27.4.2017, copy of which has been enclosed by the applicant at Annexure-A/7 of the OA. Hence, the divorce application was filed after death of the applicant's father on 25.3.2016 and at the time of the death of the applicant's father, the applicant was not a divorcee and no divorce application was pending before the competent court. Since divorce of the applicant was granted by the family court on 27.4.2017 as per the judgment at Annexure-A/7, the applicant was not divorced when her father expired on 25.3.2016. Therefore, as per the provisions of the DOPT OM dated 11.9.2013/Railway Board circular dated 26.9.2013, as extracted in para 3 and 4 of the OM dated 19.7.2017 (Annexure R/3), the applicant is not eligible for the family pension.

14. Considering the matter from another angle, it is noted from the pleadings of the applicant that no document or rules has been furnished by the applicant in support of her contention that she is eligible for family pension as a divorced daughter, although her divorce case was filed and decree of the Court was issued after death of her father on 25.3.2016. The Legal Heir Certificate dated 22.11.2016 of the applicant's father at Annexure-A/3 shows that the applicant's mother was not included as a legal heir and the applicant was shown to be a married daughter. It is stated in the order dated 13.9.2017 of the Tribunal (Annexure-A/10) that the applicant's mother pre-deceased her father. There is nothing on record to show that the applicant would be eligible for family pension even though she was not a divorcee as on 25.3.2016. The applicant's counsel relied upon the RBE No. 116/2007 (Annexure-A/6) in support of the applicant's claim. Perusal of the RBE No. 116/2007 does not reveal any provision in the said circular by which the family pension would be admissible to a daughter who is not legally divorced as on the date of death of the surviving parent. The instructions of the Railway Board relied upon by learned counsel for the applicant do not have any provision to make the applicant eligible for family pension in a situation where the filing of the divorce case and issue of the decree of divorce by the Court were after the death of one of the parents.

15. For the reasons as discussed above, I am unable to allow the reliefs claimed in this OA since there is no infirmity in the action of the respondents in this case. The OA is accordingly dismissed with no order as to costs.

(GOKUL CHANDRA PATI)
MEMBER (A)

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