

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No.290/00051/2017

With

MA No.290/00041/2017

Jodhpur, this the 31st October, 2019

Reserved on 18.10.2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Kusumlata Chouhan D/o Late Shri Hukum Singh Chouhan aged about 52 years, R/o Dharmniwas, Plot No.13, Shakti Colony, Street No.1, Ratanada, Jodhpur.

.....Applicant

By Advocate : Mr. Avinash Acharya.

Versus

1. Union of India through the General Manager, North Western Railway, Head Quarters Office, Near Jawahar Circle, Jaipur-302017.
2. The Secretary, Ministry of Personnel, Public Grievances & Pensions, Department of Pension & Pensioners' Welfare, Government of India, 3rd Floor, Lok Nayak Bhawan, Khan Market, New Delhi.
3. Senior Divisional Finance Manager, Accounts Department, North Western Railway, Jodhpur.

.....Respondents

By Advocate : Mr. Dharendra Pandey proxy for Mr. Kamal Dave.

ORDER**Per Smt. Archana Nigam**

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act 1985 for the following reliefs:-

- "(a) Application of the applicant may kindly be allowed with cost.*
- (b) Quash and set aside the impugned Office Memorandum dated 18.09.2014 (Annexure-A/1) and impugned order dated 13.05.2015 (Annexure-A/2).*
- (c) Hold that the applicant is entitled for the family pension and direct the respondents to grant the benefit of family pension to the applicant.*
- (d) Direct the respondents to make the payment of arrears of family pension with 18% interest.*
- (e) Any other appropriate relief, order or direction which this Hon'ble Tribunal consider just and proper and fact and circumstance of the case may kindly be passed favour of the applicant."*

2. The short facts of the case are that the father of the applicant was working with the Railway Department and after attaining the age of superannuation he retired from Service and was drawing his sanctioned pension. The mother of the applicant died on 19.05.2000. The applicant due to dispute with husband was living with her father from last 18 to 20 years and was dependent upon her father for her livelihood. The father of the applicant passed away on 12.09.2011.

Applicant was married in 1992, but was deserted by her husband and was forced to live in her parental house since 1993; she was living at her parental home till date. After the death of her father, the applicant filed a divorced petition before the Family Court No.1, Jodhpur being Civil Original Appeal No.126/2012 for a decree of divorce. The learned Family Court after considering the facts, allowed the decree of divorce vide order dated 03.10.2012, the applicant being eligible for family pension after the decree of divorce, applied for grant to family pension as she was solely dependent upon her father since 1993. The respondent No.3 after considering the

eligibility of the applicant for family pension issued a letter dated 21.05.2013 for grant of family pension by revising the pension order of the father of the applicant. Thereafter, the respondent No.2 vide Office Memorandum 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. Similarly, family pension to a widowed/divorced daughter is payable provided she fulfils all eligibility conditions at the time of death of her parents.

Subsequently, it was clarified by the respondent No.2 vide OM dated 18.09.2014 that the family pension should be discontinued in those cases where it had been sanctioned in pursuance of the Office Memorandum issued earlier but without taking into consideration that the widowed/divorced daughter was leading a married life at the time of death of her father/mother, whoever died later.

As a result, the family pension payable to such daughters was discontinued where the divorce decree was passed after the death of the pensioner. The applicant was granted family pension and was availing the same, but the respondent No.3 in view of impugned OM dated 18.09.2014 issued impugned letter dated 13.05.2015 directing the Branch Manager, State Bank of India, UIT Branch, Jodhpur to stop the family pension of the divorced applicant and her credit balance relating to family pension was ordered to be kept on hold till further orders as the case was being reviewed in the light of instructions issued by Railway Board.

Hence, the applicant has filed by the present OA for the reliefs quoted in para No.1 of this order.

3. By way of reply, it is submitted by the respondents that the family pension was allowed in consonance with the prevailing provisions to the applicant. The Ministry of Personnel, Public Grievance and Pensions, Department of Pension and Pensioners Welfare Government of India clarified the question of eligibility of widowed for family pension vide office memorandum dated 18.09.2014. The Office Memorandum clarified that the entitlement of divorced daughter is only if the divorce decree was passed prior to the date of the death of the employee, in other words the clarification provides that "if the widowed or divorced daughter was leading a married life at the time of death of her father or mother it will render her ineligible to family pension." As the applicant has not fulfilled the said eligibility criteria, therefore, the impugned order has rightly been passed by the respondents.

4. In additional affidavit, the applicant submitted that the Ministry of Personnel, P.G. & Pensions, Department of Pension & Pensioners Welfare, Government of India has issued a clarification vide Office Memorandum dated 19.07.2017 (Annexure-A/10) regarding eligibility of divorced daughters for grant of family pension wherein the matter was examined in consultation with Department of Expenditure and has been decided to grant family pension to a divorced daughter in cases where the divorce proceedings had been filed in a competent court during the life-time of the employee/pension or his/her spouse but divorce took place after their death, provided the claimant fulfils all other conditions of grant of family pension under Rule 54 of the CCS (Pension) Rules, 1972 and in such cases, the family pension would commence from the date of divorce.

It has been submitted by the respondents that in the life time of the father of applicant, a Registered Will was executed on 14.06.2011 in favour of the applicant by her deceased father wherein it has been specifically mentioned that due to family dispute with her husband the applicant was deserted by her husband after some time of her marriage and was wholly dependent on him for last 18-20 years and since the applicant had no other source of income for living, therefore, the self acquired property situated where the applicant is residing was granted to her by way of registered will.

5. Heard learned counsel for the applicants as well as learned counsel for the respondents. Both the counsels argued their case as per the pleadings made in the files.

6. Considered the arguments raised by the learned counsels for both sides and perused the documents available on record. The MA No.41/2017 for condoning the delay in filing the present Original Application is allowed for the reasons mentioned in the application. Accordingly, the delay in filing the present OA is condoned.

7 Admittedly, the Central Civil Service (Pension) Rules, 1972 and corresponding rules of Ministry of Railways for their employees/pensioners, family pension is payable to the family of the deceased employee/ pensioner. Before 1998, family for the purpose constituted only the spouse and dependent children of the employee/pensioner, however, in the year 1998 dependent parents and dependent widowed/divorced daughters below the age of 25 years or up to the date of their re-marriage which is earlier, were also included in the definition of family. The various pensioners associations raised the demand that family pension be granted to the

widowed/divorced daughter beyond the age of 25 years and, therefore in 2004 the Department of Pension and Pensioners, Welfare vide its office Memorandum No.1/19/03-P&PW (E) dated 25.08.2004 allowed the benefit of family pension to the divorced/widowed daughters even after she attained the age of 25 years. It is cleared vide Office Memorandum No.1/19/0-3-P&W (E) dated 11.10.2006 that the family pension was admissible to eligible widowed/ divorced daughter even if she became widow/divorce after attaining the age of 25 years Thereafter, it is further clarified vide Office Memorandum No.1/13/09-P&PW (E) dated 28.04.2011 that the widowed/divorced daughter of a Government servant will be eligible for family pension w.e.f. 25th August, 2004 irrespective of death of the employee/pensioner.

8. In regard eligibility of divorced daughters to family pension, Rule 54 sub rule 6 (iii) of CCS (Pension), Rule 1972 lays down the following:-

"The period for which family pension is payable shall be as follows:

...(iii) subject to second and third provisos, in the case of as unmarried or widowed or divorced daughter, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier;

Provided also that the grant or continuance of family pension to an unmarried or widowed or divorced daughter beyond the age of twenty-five years or until she gets married or re-married or until she starts earning her livelihood, whichever is the earliest, shall be subject to the following conditions, namely:-

(i) the family pension shall be initially payable to the minor children (mentioned in Clause (ii) or Clause (iii) of this sub-rule) in the order set out in Clause (iii) of sub-rule (8) of this rule until the last minor child attains the age of twenty-five years;

and

(ii) there is no disabled child eligible to receive family pension in accordance with the second proviso of this sub-rule;

EXPLANATION 1, - An unmarried son or an unmarried or widowed or divorced 1. substituted tilde GI, Dept of P. & P.W., Notification No. F. 1/33/2012-P&PW (E) dated the 27 December, 2012 published as-S.O. No. G.S.R. 938(E) In the Gazette of India dated the 27 December, 2012 '[daughter. except a disabled son or daughter shall] become ineligible for family pension under this sub-rule from the date he or she gets married or remarried.

EXPLANATION 2. - 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.

EXPLANATION 3. - It shall be the duty of son or daughter or siblings or the guardian to furnish a certificate to the Treasury or Bank, as the case may be, once in a year that, (i) he or she has not started earning his or her livelihood, and (ii) he or she has not yet married or remarried and a similar certificate shall be furnished by a childless widow after 1. Substituted tilde GI, the 27 December, 2012 Dept of P. & P.W., Notification No. F. 1/33/2012P&PW (E) doted . published as S.D. No. G.S.R. 938 (E) in the Gazette of India dated the 27" December, 2012 [her to the re-married or by the disabled son or daughter or by parents] Treasury or Bank, as the case may be, once in a year that she or he or they have not started earning her or his or their livelihood.

EXPLANATION 4. - For the purpose of this sub-rule, a member of the family shall be deemed to be earning his or her livelihood if his or her income from other sources is equal to or more than the minimum family pension under sub-rule (2) of this rule and the dearness relief admissible thereon.

xxx	xxx	xxx
(14) For the purposes of this rule, -		
Xxx	xxx	xxx

2. See also GID (23) below this rule (b) "family" in relation to a Government servant means -

(i) wife in the case of a male Government servant¹ or husband in the case of a female Government servant. 3. The words "provided the marriage took place before the retirement of the Government servant" were deleted by 12th November, G.I., Dept. Of P & P. W., Notification No. 1/87/89-P. & P. W. (C), dated the 1990, published as S.O. No. 3269 in the Gazette of India, dated the 8 December, 1990. All post-retiral spouses are eligible for family pension from the date following the date of death of the pensioner even if the marriage is prior to the date of notification. [* * *]

(ia) a judicially separated wife or husband, such separation not being granted on the ground of adultery 3. The words "provided the marriage took place before the retirement of the Government servant" were deleted by G.I., Dept. Of P & P.W., Notification No. 1/87/89-P. & P.W. (C), dated the 12th November, 1990, published as S.O. No. 3269 in the Gazette of India, dated the 8th December, 1990. All post -retiral spouses are eligible for family pension from the date following the date of death of the pensioner even if the marriage is prior to the date of notification. [* * *] and the person surviving was not held guilty of committing adultery.

(ii) unmarried son who has not attained the age of twenty-five years and unmarried or widowed or divorced daughter, including such son and daughter adopted legally;"

9. Further, the Department of P & WP OM dt. 11.9.13 on "Eligibility of widowed/divorced daughters for grant of family pension" clarifies as under:

"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/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 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 M., dated 25/30th August, 2004, read with O.M., dated 28.4.2011."

10. The Department of P & P.W. issued OM dated 11.10.06 which stipulates as under:

"The Family Pension to Widow/ Divorced daughters is admissible irrespective of the fact that divorce/ widowhood takes place after attaining the age of 25 years or before, in other words the Family Pension will be admissible without age restriction subject to other conditions being satisfied."

11. A bare perusal of the provisions (supra) and O.M.s would irrefutably and inarguably demonstrate and exemplify that such divorced daughters were never to be considered as ineligible if they were not divorced during lifetime of employee or family pensioner or filed suit-during their lifetime. Government never intended to deprive such widowed/ divorced daughters of their family pension. Applicant therefore ought not to have been discriminated on the basis of date of divorce or date of filing suit for divorce.

12. Further, from perusal of the above Office Memorandum, in our considered opinion, it is clear that the applicant's right as divorced daughter to receive family pension accrued long before introduction of the circular dated 18th September, 2014 (Annexure-A/1). It is also clear from perusal of the order of the Family Court No.1, Jodhpur passed in Civil Original Suit No.126/2012 dated 03.10.2012 (Annexure-A/6) that the family Court came to the conclusion that the husband of the applicant had misbehaved with the applicant and was not willing to improve his conduct despite her best efforts. On February 1993, he also forced the applicant to live with her matrimonial home, and as a consequence of which she had to come back to her parental home and to start residing with her parents. It is seen that she was residing continuously in her parental home since 1993 (almost for period of 19 years).

13. As regards the filing of the divorce decree, the applicant was advised by her father not to do so, on account of social stigma

following divorce. Her father had also given the applicant the assurance that he would take care of her while he was alive. These facts as recorded by the Family Court fortified the claim of the applicant as regards her entitlement of the family pension, which had already been sanctioned to her. It has also been recorded that the husband of the applicant refused to appear before the Family Court.

14. Further, a bare perusal of the Will made out by pensioner late Shri Hukum Singh on 14.06.2011 (Annexure-A/11) makes it very clear that the pensioner acknowledged that Smt. Kusumlata Chouhan, as his daughter who was in need of support for her livelihood and therefore in order to support his daughter he has given her rights in his property so that she has a roof over her head.

15. From the above, it is very clear that the applicant is living at her parental home since 1993. As recorded by the Family Court she had been thrown out from her matrimonial home in the year 1993 but did not file the formal divorce to maintain the honour of the family of the pensioner within his community. She was, however, completely dependent on her parents who also acknowledge this fact. This is very clear from the Will of the pensioner as well. It is also clear from perusal of the divorce decree dated 03.10.2012 (Annexure-A/6) and the Will executed by the father of the applicant (Annexure-A/11), that the applicant was living at her parental home with her parents since 1993, and is fully dependent upon the deceased employee.

16. We have also perused the judgment cited by the learned counsel for the applicant of Hon'ble High Court of Bombay, Nagpur Bench passed in the case of *Union of India through the General*

Manager & anr. vs. Smt. Usha Eknath Patil (Writ Petition No.6884/2016), wherein it has been held:-

"21. There cannot be any debate about this proposition. Here, Clause 19 (b), mentioned supra, includes not only a widowed or divorced daughter but also unmarried daughter. The said clause also entitles adopted son or daughter to family pension. Clause therefore is wide and looks after welfare of family of deceased employee. Clauses 4 and 5 (highlighted portion, supra) of office memorandum dated 11/09/2013 show the intention of Railways not to leave a destitute woman without any means of livelihood. This object and intention can not be defeated in present facts.

22. In present facts, though customary divorce on 21/7/1992 may not be legally recognized, facts show that from said date Usha was not residing with her husband and was therefore member of family of her deceased father. She was therefore a destitute residing with her mother Vatsala who expired on 28/12/1999. When the provision entitles unmarried or a divorced or a widowed daughter to family pension, we find that Usha is definitely covered there under."

17. In view of foregoing discussions made hereinabove and placing reliance on the judgment of Hon'ble High Court of Bombay in *Smt. Usha Eknath Patil* (supra) as well as OMs and circulars, we are of the considered opinion that the applicant is entitled for the family pension. Therefore, we quash and set aside the impugned OM dated 18.09.2014 (Annexure-A/1) and impugned order dated 13.05.2015 (Annexure-A/2). The respondents are directed to grant the benefit of family pension to the applicant. Further, if any, arrears of family pension is due, the same be granted to her within a period of three months from the date of receipt of a copy of this order.

18. The OA is thus allowed as stated above. No order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

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