

CENTRAL ADMINISTRATIVE TRIBUNAL
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O.A./350/932/2018

Heard on 12.09.2019
Date of Order: 19.09.2019

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

Rinku Chakraborty,
Daughter of late Sasnjib Kumar Chakraborty,
Aged about 47 years,
Residing at 1/8/1 East Mall Road,
Kolkata 700080, West Bengal

.....Applicant

Vrs.

1. Union of India
through the General Manager,
Ministry of Defence,
Gun & Shell Factory, B.T Road,
Cossipore, Kolkata-700002.

2. Senior General Manager,
Gun & Shell Factory,
Cossipore, B.T Road,
Kolkata-700002.

.....Respondents

For the Applicant(s): Mr. A.Chakraborty, Counsel

For the Respondent(s): Mr. B.P.Manna, Counsel

ORDER

Bidisha Banerjee, Member (J):

The applicant, in this O.A., has sought for the following reliefs:

"a) Speaking order no. 6825SKC/Pen. Cell dated 12.6.2018 issued Jt. General Manager on behalf of the Sr. General Manager cannot be unstained in the eye of law as there be same may be quashed.

b) An order do issue directing the respondents to grant family pension in favour of the applicant since modified circular dated issue DOP&T is applicable in."

2. Applicant has challenged the speaking order dated 12.06.2018, which reads as under:

No. 682/5/SKC/Pen. Cell

Date: 12-06-2018

To,
Smt. Rinku Chakraborty,
D/o Late Sanjib Kumar Chakraborty,
1/8/1, East Mall Road,
PO- Mall Road,
Kolkata- 700080, (WB).



Sub: Family Pension claim in r/o Smt. Rinku Chakraborty, divorced daughter of Late Sanjib Kumar Chakraborty, Ex. Foreman Technical of GSF. Dispose off.

Ref: i) OA No. 350/01061 of 2015, Smt. Rinku Chakraborty Vs Union of India & Ors.
ii) Representation dated 15-09-2017 received from Smt. Rinku Chakraborty.

1. (Kindly refer the application quoted at ref (ii) above for grant of family pension as a divorced daughter. It is intimated that your case was forwarded to PCDA (P), Allahabad but the same has been returned unactioned by PCDA (P), Allahabad with the following observations:
 - a) Shri Anupam Banerjee husband of Smt. Rinku Chakraborty had filed a Mat Suit No. 63 of 2001 during 2001 for dissolution of marriage. However, this Mat suit was dismissed by Hon'ble A.D.J. 10th Court, Alipore during 08-07-2011 without giving any decree for divorce. Later, Mat Suit No. 31/2013 was filed by Shri Anupam Banerjee for divorce in the Court of Addl. District Judge, 3rd Court Barasat during 2013 wherein marriage between Smt. Rinku Chakraborty and Shri Anupam Banerjee was dissolved by Hon'ble court on 04-04-2014. Hence, she actually got legal divorce on 04-04-2014 under the Mat Suit No. 31/2013.
 - b) As per No. 1/13/09-P & PW (E) dated 19-07-2017 of GOI, Ministry of Personnel, PG & Pensions, the family pension can be granted to a divorced daughter in such cases where the divorce proceedings had been filed in a competent court during the lifetime of the employee/pensioner or his/her spouse but divorce took place after their death-provided the claimant fulfils all other conditions is eligible for grant of family pension under rule 54 of the CCS (Pension) Rules, 1972. In the instant case, the parents of Smt. Rinku Chakraborty died on 26-09-1991 (mother) and 02-04-2012 (father) whereas she got divorce from the Court of Addl. District Judge, 3rd Court Barasat under Mat Suit No. 31/2013 on 04-04-2014. It is quite apparent that Divorce proceedings in Mat Suit No. 31/2013 were intimated in year 2013 i.e. after the demise of her parents. Therefore, Smt. Rinku Chakraborty is not entitled for family pension in the light of OM-No. 1/13/09-P&PW(E) dated 19-07-2017 of Ministry of Personnel, PG & Pension, Department of Pension & Pensioners Welfare.
2. Therefore, on the basis of PCDA (P), Allahabad's observation regarding the claim of family pension, it is concluded that Smt. Rinku Chakraborty is not entitled for family pension in the light of OM No. 1/13/09-P&PW(E) dated 19-07-2017 of Ministry of Personnel, PG & Pension, Department of Pension & Pensioners Welfare.
3. This issue with the approval of the competent authority.

Note: Earlier letter dated 09-06-2018 should stands cancelled due to typing mistakes in point 1 (b).

(C. D. RAJARAM)

Jt. General Manager / Admin
For Sr. General Manager

3. Heard Ld. Counsels for both the parties and perused the materials on record.

4. A bare perusal of the speaking order demonstrates that the husband of the applicant, viz: Anupam Banerjee, had filed a Mat Suit No. 63/2001 for dissolution of marriage, which was dismissed on 30.06.2011 without giving any decree for divorce. Thereafter, mutual divorce was sought for by the couple through Mat Suit No. 31/2013, which ultimately got decreed on 04.04.2014 permitting them

legally separated from that date. Therefore, the contention of respondent authorities that applicant is not entitled to family pension in the light of O.M. dated 19.07.2017 as no proceedings were pending as on the date of death of the parent, in my considered opinion, seems to be erroneous.

It cannot be accepted that the husband, who had sought for dissolution of marriage in 2001 would be living with his wife until 2011 or that the present applicant was not a dependent upon her parents even prior to obtaining a decree of divorce in 2014.

5. At hearing, Ld. Counsel for the applicant would place the relevant part of the order passed in Mat Suit No. 31/2013, which reads as under:

"subsequently due to difference of opinion, lifestyle, behaviour and culture they had been living separately since 20.8.1994 i.e. for more than 18 years before the date of presentation of the petition. Till now they have been living separately. They are not in a position to live together again."

Above were the grounds for allowing the Matrimonial Suit U/s 13B of Hindu Marriage Act, which was decreed on consent. Therefore, once again at the cost of reiteration, I hold that the reason for rejection of the applicant's prayer is without any basis.

6. The rejection being as such arbitrary, the speaking order is quashed and the matter is remanded back to the authorities to consider the matter afresh in terms of the decree in Mat Suit extracted supra and O.M. dated 19.07.2017, which specifies as under:

"No. 1/13/09-P&PW (E)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Pension & Pensioners' Welfare

3rd Floor, Lok Nayak Bhawan,

Khan Market, New Delhi,
19th July, 2017.

OFFICE MEMORANDUM

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

XXX

XXX

XXX

XXX

3.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.

XXX

XXX

XXX

XXX".

7. Accordingly, the O.A. stands disposed of. No costs.

8. Let appropriate order be issued within two months from the date of receipt of a copy of this order.

(Bidisha Banerjee)
Member (J)

RK