

COURT No.3
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

C

OA 1209/2019

Smt Asha D/o Late Ex Sgt PC Singh Applicant

VERSUS

Union of India and Ors. Respondents

For Applicant : Mr. Manoj Kumar Gupta, Advocate

For Respondents : Mr. R S Chillar, Advocate

CORAM

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)

HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

23.05.2023

Order allowing the OA pronounced, signed and dated.

2. In view of the importance of the issue, we request the permission of the Hon'ble the Chairperson of the Armed Forces Tribunal to direct circulation of this order to all Benches of the Armed Forces Tribunal.

3. The Registry is further directed to upload this order forthwith during the course of the day.

(JUSTICE ANU MALHOTRA)
MEMBER (J)

(REAR ADMIRAL DHIREN VIG)
MEMBER (A)

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Union of India & Ors. ... Respondents

For Applicant : Mr. Manoj Kr Gupta, Advocate
For Respondents : Mr. Anil Gautam, Sr. CGSC

CORAM :

HON'BLE MS. JUSTICE ANU MALHOTRA, MEMBER (J)
HON'BLE REAR ADMIRAL DHIREN VIG, MEMBER (A)

ORDER

The applicant vide the present OA makes the following prayers:

“(a) Quash the Impugned Order issued vide Respondent’s letter dated 26 Apr 2019 which is contradictory in nature.

(b) For direction to Respondents to grant Family Pension wef date of divorce ie, 18 Dec 2018.

(c) For direction to Respondents to pay arrears with interest @ 10% p.a.

(d) For direction to Respondents to pay arrears with interest @ 10% p.a.

(e) Any other order as may be deemed fit and proper in the facts and circumstances of the case.”

FACTS PUT FORTH

2. The applicant Asha Singh is the divorced daughter of late Ex Sgt Pyar Chand Singh who expired on 09.08.2013. The air veteran was enrolled in the Indian Air Force on 18.08.1973 and was discharged on 31.08.1993 and was granted service pension vide PPO No. 08/14/6/09646/1993. As per the service records, his next of Kin was recorded as Smt Radhika Devi (wife) who also expired on 30.08.2016.

3. The details of the children of late Ex Sgt Pyar Chand Singh as stated in the counter affidavit filed on behalf of the respondents dated 17.01.2020 are as under:-

“

<i>No.</i>	<i>Name</i>	<i>Relation</i>	<i>Date of Birth</i>
<i>1</i>	<i>Sandhya Kumari</i>	<i>Daughter</i>	<i>15 Apr 1976</i>
<i>2</i>	<i>Asha Kumari</i>	<i>Daughter</i>	<i>14 Jun 1979</i>
<i>3</i>	<i>Artee Kumari</i>	<i>Daughter</i>	<i>07 Jul 1980</i>
<i>4</i>	<i>Ravi Kant Singh</i>	<i>Son</i>	<i>20 Sep 1981</i>

”

4. Smt Asha Kumari, the daughter of the deceased Sgt Pyar Chand Singh and Smt Radhika Devi, sought the grant of family pension from the Directorate of Air Veterans (IAF) vide representation dated 29.01.2019, claiming to be their dependent divorcee daughter. The said representation was declined by the respondents vide letter no. Air

HQ/99798/2/614314/3199 3/HD/FP/DAV dated 08.02.2019 whereby the applicant was apprised to the effect:-

“2. It is intimated that as per pension policy in vogue Divorcee Daughter is eligible for family pension, if the divorce case filed within the life time of her parents. However, in your case date of filing of case is post death of your parents.

3. Hence, it is regretted to inform you that you are not eligible for family pension of late air veteran.”

5. The applicant made another representation dated 09.04.2019 stating that she had filed an FIR dated 31.08.2015 in the Crime (Women) Cell, New Delhi alleging demands for dowry and domestic violence. She also filed an application for maintenance in view of domestic violence, i.e. MP No. 155 in the year 2014 and MP No. 797 in the year 2017 before the Family Court, Dwarka, New Delhi.

6. The FIR No. 3144/2017 P.S. Crime (Women) Cell Nanakpura, was registered on 25.04.2017 under Sections 498A/406/174A of the Indian Penal Code 1860 for the alleged commission of the offences from 19.04.2000 and 13.08.2015 with 19.04.2000 being the date of the marriage of the applicant.

7. The marriage between the applicant and her husband Shri Umesh Prasad Singh was dissolved vide a decree of divorce dated 18.12.2018 in HMA No. 3308/2018 u/s 13 B (2) of Hindu Marriage Act 1955, of the Court of the Judge, Family Court, Dwarka, New Delhi, copy of which decree has been placed on record as Annexure R-1 to the counter affidavit filed on behalf of the respondents.

8. The averments put forth hereinabove in Para 2 & 3 are not disputed as per the records in view of the counter affidavit dated 17.01.2020 filed by the respondents.

CONTENTIONS OF THE APPLICANT

9. The applicant has submitted:-

- ^Tthat she has been residing permanently with her parents since 23.07.2013,
- ^Tthat the complaint with the CAW against her spouse under the Protection of Women from Domestic Violence Act 2005 was filed on 23.07.2014 which was later converted to the FIR referred to hereinabove,
- ^Tthat she filed the maintenance petition in August 2014, and
- ^Tthat her mother i.e. the spouse of the deceased pensioner expired on 30.08.2016.

10. The applicant has submitted that after her mother's demise on 30.08.2016, she had to cater for everything including house rent, food, education of daughters and for herself and in the absence of her mother's support, whose pension has been stopped after her demise, the survival of the applicant has become critical.

11. The applicant has submitted that in as much as all doors were closed she was forced to compromise with the situation and gave her consent before the Family Court/MM for settlement in criminal

proceedings on 01.01.2018 so that she can look after her children who are on the verge of malnutrition/starvation.

12. Inter alia the applicant submits that due to the legal battle which lasted three (3) years, she had been burdened with the financial crisis and has become a victim of circumstances and unable to pay rent to the hired accommodation, where she lives with her children after demise of her mother.

13. The applicant submits that in as much as she had permanently moved to her mother's house on 23.07.2013 i.e. prior to the demise of her father on 08.08.2013 and had filed a complaint in the CAW Cell on 23.07.2014 including the maintenance proceedings which were pending from August 2014 much prior to the demise of her mother on 30.08.2016, she ought not to be discriminated against by the respondents for having initiated the divorce proceedings after the demise of her mother.

14. The applicant submits that the grant of pension to a widowed or divorced daughter is for survival and that the divorce proceedings initiated after demise of the deceased pensioner and after the demise of his wife i.e. after the demise of the father and mother respectively of the applicant, cannot detract from the right of the applicant who is a divorced daughter of Late Ex-Sgt P C Singh and his wife who has also since expired, especially as the proceedings under the Protection of Women from Domestic Violence Act 2005 as well as the maintenance

proceedings were lodged in 2014 itself much before the demise of her mother and that the complaint to the CAW Women Cell Nanakpura had been filed on 23.07.2013 i.e. even prior to the date of demise of her father (Late Ex-Sgt P C Singh) on 08.08.2013.

15. The applicant thus submits that the respondents have chosen to ignore Articles 14 & 21 of the Constitution of India to create an unwarranted distinction between the divorce proceedings and a divorce decree.

16. The applicant submits that the policy of the respondents detailed in the impugned letter dated 26.04.2019 which states to the effect that:-

“grant of 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 fulfills all other conditions for grant of family pension. In such cases, the family pension will commence from the date of divorce.”

should equally apply also in cases where there have been proceedings because of domestic violence and for seeking maintenance allowance.

17. The applicant has submitted further that she has no other income for survival for herself and for her daughters and has been fighting a legal battle against her spouse from August 2014 and that she is in distress after the demise of her pensioner mother on 30.08.2016.

CONTENTIONS OF THE RESPONDENTS

18. The respondents submit that in terms of the MoD letter no. 1(9)/2013-D(Pen/Policy) dated 17.11.2017, wherein a clarification has been provided in relation to the aspect of the grant of 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 the divorce took place after their death** - provided the claimant fulfills all other conditions for grant of family pension and in which cases it had been decided that the family pension would commence from the date of the divorce as per the Government of India, Ministry of Personnel, P.G. & Pensions', Department of Pension & Pensioners Welfare vide OM No. 1/13/09-P&PW (E) dated 19.07.2017, would also apply *mutatis mutandis* to divorced daughters of Armed Forces Personnel.

19. The respondents thus submit that the applicant cannot link the FIR filed by her on 23.07.2014 for alleging dowry demands and domestic violence and the other two applications filed by her for maintenance with her divorce proceedings, in as much as the HMA Petition no. 3308/2018 for divorce was actually filed on 26.09.2018 with the mutual consent of both the parties. The respondents submit that the applicant is not entitled for the grant of family pension as has been rightly denied to her and of which she was informed vide the impugned letter dated 26.04.2019.

ANALYSIS

20. It is essential to observe that there is not a whisper of an averment in the counter affidavit filed on behalf of the respondents denying the contention of the applicant that she had been living with her mother.

21. It is essential to observe that the purpose of giving a family pension is to tide over penury and to provide sustenance to the family members of a deceased pensioner till they are able to sustain themselves, or till they fall within the ambit of conduct which is 'not good' in terms of Rule 7 of the Central Civil Services (Pension) Rules 2021.

22. As observed by the Hon'ble Supreme Court in the case of *DS Nakara vs UOI* (AIR 1983 SC 130) "*A pension scheme consistent with available resources must provide that the pensioner would be able to live: (i) free from want, with decency, independence and self-respect, and (ii) at a standard equivalent at the pre-retirement level.*"

Apparently 'family pension' is provided to the eligible kith and kin of the deceased pensioner which is apparently for the same purpose. A divorced daughter has been brought into the ambit of 'family' in terms of Family Pension 1964 which is incorporated in Chapter VII of the Regulation of Amount of Pensions in CCS Pension Rules 1972, which reads to the effect:-

“54. Family Pension, 1964.

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21. Dependent parents and widowed/divorced daughter also included in the definition of family from 01.01.1996.- For the purpose of grant of Family Pension, the definition of Family shall also include:

(a) Parents who were wholly dependent on the Government servant when he/she was alive, provided the deceased employee had left behind neither a widow nor a child.

*(b) Son/ daughter including *widowed/divorced daughter till he/she attains the age of 25 years or up to the date of his/her marriage/remarriage, whichever is earlier.*

[NOTE.—The provisions of this rule will also extend, from 22nd September, 1977, to Government servants on pensionable establishments who retire/died before 31-12-1963, as also to those who were alive on 31-12-1963, but had opted out of 1964 Scheme.]”

Regulation 191 of the Pension Regulation for the IAF 1961 provides:

“A pension is intended for the support of all the eligible members of the family, respective of in whose name it stands.”

23. It is essential to observe that the only reason why the respondents have declined the grant of family pension to the applicant who is a divorced daughter of the deceased- Ex Sgt P C Singh, the Air Veteran, is because the proceedings for divorce which culminated into divorce vide decree of divorce dated 18.12.2018 in HMA No. 3308/2018 of the Court of the Judge of Family Court, Dwarka, New Delhi, was presented on 13.12.2018 u/s 13 B (2) of the HMA 1955 with the first petition u/s 13 B

(1) of the HMA 1955 having been allowed on 29.09.2018 which petitions were both filed after the demise of the mother of the applicant who expired on 30.08.2016.

24. *It is apparent that where the intent of the grant of family pension in terms of Regulation 191 of the Pension Regulations of IAF 1961 Part 1 is for the support of eligible members of the family, and as pension is a social welfare measure rendering social economic justice by providing economic security in old age to the pensioner and on his or her demise to the family members entitled thereto to prevent them from facing the vagaries of life so that they can lead a dignified life, merely because the divorce petition was instituted by the daughter of a deceased pensioner after his demise and after the demise of his wife i.e. her mother (as in the instant case) cannot per se be a ground to disentitle the applicant for the grant of family pension, if otherwise entitled to the same.*

25. This is so, in as much as bringing forth such demarcation through the MoD letter dated 17.11.2017 no. 1(9)/2013-D(Pen/Policy) stating to the effect:-

“4. The matter has been examined in this department and it has been decided that the clarification “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 fulfills all other conditions for grant of family pension. In such cases, the family pension will commence from the date of divorce” given by Government of India, Ministry of Personnel, P.G. & Pensions’, Department of Pension &

Pensioners Welfare vide OM No. 1/13/09- P&PW (E) dated 19.07.2017 would also apply mutatis mutandis to divorced daughters of Armed Forced Personnel.”

creates an artificial distinction between a divorced daughter of a deceased pensioner whose spouse has also expired on the basis of the date of institution of the divorce proceedings *de hors* consideration of the aspect of dependence of the divorced daughter on the deceased pensioner and her spouse which is wholly violative of Article 14 of the Constitution of India which mandates *‘the grant of equality to all persons before the law as well as the equal protection of the laws within the territory of India’ which the State cannot deny to any person.*

26. As laid down by the Hon’ble Supreme Court in *L. Chandra Kumar vs UOI & Ors.*, Appeal (Civil) 481 of 1980, decided on 18.03.1997, (which verdict of the Hon’ble Supreme Court in *L. Chandra Kumar* (supra) has been referred to with approval vide judgment dated 21.03.2023 of the Hon’ble Supreme Court in Civil Appeal 447/2023 in *UOI & Ors vs Parashotam Dass*), Tribunals are possessed of the competence to test the constitutional validity of statutory provisions and rules, except of the parent statute under which they themselves are created. No such embargo exists in the instant case

27. Thus, we hold that the artificial distinction created vide MoD letter no. 1(9)/2013-D(Pen/Policy) dated 17.11.2017 vide para 4 thereof in relation to divorced daughters of Armed Forces Personnel who have

instituted divorce proceedings in competent courts after the demise of the deceased pensioner parent and also after the demise of his/her spouse though the divorce undoubtedly took place and despite being entitled as a claimant fulfilling all other conditions for grant of family pension,- to decline them the right of family pension,- is wholly unconstitutional.

28. The date of institution of divorce proceedings by a daughter cannot determine her dependency on her parents nor on the estate of her parents. Thus, the unspelt limitation embedded vide MoD letter no. 1(9)/2013-D(Pen/Policy) dated 17.11.2017 on the grant of family pension to a divorced daughter only where the divorce proceedings were instituted by her prior to the demise of the spouse of the deceased pensioner, even though she does get divorced and fulfills all other conditions for grant of family pension,- is wholly violative and discriminatory of the right of equality to all the divorced daughters for the grant of family pension if otherwise entitled to, The said unspelt limitation in the MoD letter no. 1(9)/2013-D(Pen/Policy) is thus set aside.

29. It is also essential to observe that a contention was sought to be raised through the counter affidavit filed on behalf of the respondents dated 17.01.2020 that the grant of decree of divorce to the applicant vide decree dated 18.12.2018 was u/s 13 B (2) of Hindu Marriage Act 1955, and was thus the grant of divorce through '**mutual consent**' and thus the applicant would not be entitled to the grant of family pension. The said

submission is wholly unwarranted and does not take into account the several reasons for which divorce through mutual consent may take place. The distinction sought to be drawn between a mutual consent divorce or on any other grounds to deprive pension to a divorced daughter entitled to the same is wholly fallacious. In any event, even as per the MoD letter no. 1(9)/2013-D(Pen/Policy) dated 17.11.2017, there has been no distinction created in relation to a divorce that takes place of a daughter of a deceased pensioner who has expired and whose spouse has also expired, whether the divorce was granted vide a decree of divorce through mutual consent or for any reason in terms of the various enactments prescribed by law.

CONCLUSION

30. Thus, the impugned letter dated 26.04.2019 no. Air HQ/99798/614314/31993HD/ FP/DAV is set aside.

31. The respondents are directed thus to consider the representation dated 09.04.2019 filed by the applicant with the MoD taking into account the factum of dissolution of her marriage vide a decree of divorce dated 18.12.2018 in HMA No. 3308/2018 of the court of the Judge of Family Courts, Dwarka, New Delhi, u/s 13 B (2) of Hindu Marriage Act 1955, and to grant her family pension in the event of her fulfilling all other conditions for the grant of family pension from the date of divorce granted to her. The said representation dated 09.04.2019 filed by the

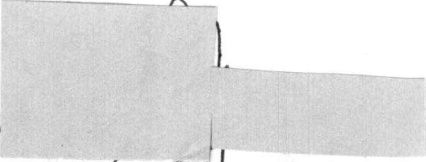
applicant with the MoD be disposed of by the Respondents within 60 days from the date of this order.

32. The OA is disposed of accordingly.

33. We request the permission of the Hon'ble the Chairperson of the Armed Forces Tribunal to direct circulation of this order to all Benches of the Armed Forces Tribunal, in view of the importance of the issue.

34. The Registry is further directed to upload this order forthwith during the course of the day.

Pronounced in the Open Court on 23 day of May, 2023.


[REAR ADMIRAL DHIREN VIG]
MEMBER (A)


[JUSTICE ANU MALHOTRA]
MEMBER (J)

/AP/