

Court No. - 39

Case :- WRIT - A No. - 19022 of 2023

Petitioner :- Smt. Rukaiya Khatoon

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Amardeo Singh

Counsel for Respondent :- A.S.G.I.,Gaurav Kumar Chand

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Shri Amardeo Singh, learned counsel for the petitioner and Shri Gaurav Kumar Chand, learned counsel for the respondent-Union.

2. Present petition has been filed to challenge the order of the Central Administrative Tribunal, Allahabad Bench, Allahabad dated 21.07.2023 passed in Original Application No. 330/00806 of 2019 (Smt. Rukaiya Khatoon Vs. Union of India and others). By that order, the learned Tribunal has rejected the Original Application filed by the petitioner and confirmed the rejection of her claim to be paid family pension arising from the death of her father, Warasat Hussain, who died on 10.02.1998.

3. Submission of learned counsel for the petitioner is, originally, Rule 75(6) (i), (ii) and (iii) of Railway Services (Pension) Rules, 1993 (hereinafter referred to as the 'Rules') read with Rule 75(8) of those Rules did not provide for family pension to a widowed daughter. Later, by means of the Railway Board Circular being RBE No. 99 of 2013, dated 26.09.2013, provision was made for grant of family pension to a widowed daughter as well. Eligibility to receive family pension was created in favour of widowed daughter as well. In absence of any dispute to the fact that the

present petitioner suffered widowhood on 16.12.2005, she has become eligible to receive family pension arising from the death of her father on 10.02.1998.

4. He would further submit that the Tribunal has completely erred in rejecting the claim of the petitioner on the reasoning that the petitioner suffered widowhood much after the death of her father. Since eligibility has arisen in terms of the Rules read with Railway Board Circular, the petitioner may not have been discriminated on the basis of date of death of her husband.

5. On the other hand, learned counsel for the respondent-Union would submit that the petitioner is not eligible to family pension in terms of the Railway Board Circular, RBE No. 99 of 2013, dated 26.09.2013. Therefore, the Tribunal has not erred in rejecting the Original Application.

6. Having heard learned counsel for the parties and having perused the record, it is undisputed that under the original/unamended rules, the widowed daughter of a railway employee was not eligible to family pension. At the same time, it may be worthwhile to notice the provisions of Rule-75 to the extent they have been relied by the learned counsel for the petitioner. It reads as below :

"75. Family Pension Scheme for railway servants, 1964.-(1) The provisions of this rule shall apply:-

(a) to a railway servant entering service in a pensionable establishment on or after the 1st January, 1964; and

(b) to a railway servant who was in service on the 31st December, 1963 and came to be governed by the provisions of the Family Pension Scheme for Railway Employees, 1964, contained in Railway Board's letter No. F(P) 63 PN-1/40, dated the 2nd January, 1964 as in force immediately before the

commencement of these rules.

(6) The period for which family pension is payable shall be as follows:-

(i) in the case of a widow or widower, up to the date of death or remarriage, whichever is earlier;

(ii) in the case of a son, until he attains the age of twenty five years; and

(iii) in the case of an unmarried daughter, until she attains the age of twenty five years or until she gets married, whichever is earlier :

Provided that if the son or daughter, of a railway servant is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty-five years, the family pension shall be payable to such son or daughter for life subject to the following conditions, namely :-

.....

(8) (i) Except as provided in clause (d) of sub-rule (6) and clause (i) of sub-rule (7), the family pension shall not be payable to more than one member of the family at the same time.

(ii) If a deceased railway servant or pensioner leaves behind a widow or widower, the family pension shall become payable to the widow or widower, failing which to the eligible child."

7. Then, paragraph-1 and 4 of the Railway Board Circular, RBE No. 99 of 2013, dated 26.09.2013 read as below :

"1. 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.

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 fulfills all eligibility conditions at the time of death/ineligibility of her parents and on the date her turn to receive family pension comes."

8. Undeniably, prior to the introduction of the Railway Board Circular, RBE No. 99 of 2013, dated 26.09.2013, the Rules had made no provision for grant of family pension to a widowed daughter of a railway employee. That eligibility existed in favour of widowed spouse/daughter till her/his marriage; a son till he attained the age of 25 years and unmarried daughter till she attained the age of 25 years of marriage, whichever is earlier.

9. In the present case, the petitioner is the daughter of Warasat Hussain, the deceased railway employee. She got married to one Shahid Ahmad on 18.04.1971. Seen in that light, on the date of occurrence of the unfortunate death of her father i.e. 10.02.1998, she was not eligible to family pension under the Rules as they existed. On that date, the Railway Board Circular, RBE No. 99 of 2013, dated 26.09.2013 had not come in force. To that extent, there is no dispute between the parties.

10. As to the effect of the Railway Board Circular, RBE No. 99 of 2013, dated 26.09.2013, in light of paragraph-1 and 4 thereof

extracted above, it is clear that the eligibility to receive family pension was created also in favour widowed/divorced daughter of a railway employee with effect from 30.08.2004. Again it cannot be disputed that the said eligibility was created with retrospective effect i.e. for the benefit of such eligible widowed/divorced daughter even in cases where the railway employee being the parent of the widowed/divorced daughter (claiming eligibility), may have died before 30.08.2004. However, the liability to pay family pension would arise prospectively, from 30.08.2004 only.

11. What therefore requires our consideration is whether the petitioner was eligible to receive family pension arising from the death of her father which took place on 10.02.1998. Insofar as the petitioner is the daughter of the deceased, Warasat Hussain, a railway employee who died on 10.02.1998, the condition prescribed in paragraph-1 of the Railway Board Circular, RBE No. 99 of 2013, dated 26.09.2013, stood satisfied, to that limited extent. However, the language of paragraph-4 of the said Circular leaves no element of doubt that family pension would be payable to a widowed / divorced daughter of a railway employee if she fulfils the eligibility conditions at the time of occurrence of death of her parent who may have been a railway employee.

12. In view of that specific stipulation, the petitioner must establish the eligibility to receive pension on the date of occurrence of death of her father, Warasat Hussain on 10.02.1998.

13. In that regard, it is undisputed that the petitioner was married to Shahid Ahmad on 10.04.1971. He was alive on the date of occurrence of death of Warasat Hussain i.e. 10.02.1998. The status of widowhood came to be attached to the petitioner after seven years on 16.12.2005.

14. Therefore, on the date of occurrence of death of Warasat Hussain, the petitioner did not fulfil the eligibility condition to receive family pension.

15. Further submission of learned counsel for the petitioner that if such interpretation is made, the petitioner would have remained ineligible to receive family pension even if Shahid Ahmad had predeceased Warasat Hussain, is therefore misconceived. In cases where a married daughter of a railway employee either had divorced or if she may lose her husband during the life time of her parent-a railway employee, by virtue of the express language of paragraph-4 of the Railway Board Circular, RBE No. 99 of 2013, dated 26.09.2013, eligibility condition to receive family pension would always stand fulfilled on the date of occurrence of such death.

16. In such cases, subject to fulfilment of all other conditions, the claim for family pension may be tested on its own merits.

17. In view of the above, we find no error committed by the Tribunal in rejecting the Original Application on the reasoning that the husband of the petitioner was alive on the date of occurrence of death of her father who was a railway employee.

18. The writ petition lacks merits and is accordingly **dismissed**.
No order as to costs.

Order Date :- 9.11.2023
SA

(Shiv Shanker Prasad, J.) (S.D. Singh, J.)