

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

**THE HON'BLE JUSTICE HARISH TANDON
&
THE HON'BLE JUSTICE RABINDRANATH SAMANTA**

**WP.CT 10 of 2017
Union Of India and Others
Vs
Ratna Sarkar**

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Ms.Aparna Banerjee.

..... for the Petitioners.

Mr. Samir Chakraborty.

..... for the Respondent

Heard On : 05.01.2022

Judgment on : 07.02.2022

Rabindranath Samanta, J:-

1. This writ petition has been filed by the petitioners Union of India & Ors against the order dated 16.06.2016 passed by the Central Administrative Tribunal, Calcutta Bench, Kolkata (hereinafter be referred to as the Tribunal) in O.A. No. 350/01194/2015. The respondent Ratna Sarkar filed the Tribunal application seeking the following reliefs:-
 - a) To issue direction upon the respondents and their men and agents to cancel, quash, set aside the impugned

order dated 03.07.2015 and the order dated 01.07.2015 forthwith;

- b) To issue further direction upon the respondent to direct the respondents to declare that the Office Memorandum dated 18.09.2014 issued by the Ministry of Personnel, P.G. & Pensions, Department Of Pension & Pensioners' Welfare, Government of India bearing No. 1/13/09-P&PW(E) is ultra vires the constitution;
- c) To direct the respondents to continue with the making payment of family pension to the applicant as usual as before till the disposal of the application;
- d) To direct the respondents to produce the entire record of the case before the Tribunal for effective adjudication of the issues involved therein;
- e) And to pass such order or orders or further order as the Tribunal may deem fit and proper.

2. By the impugned order dated 16.06.2016 the Learned Tribunal has declared that the clarificatory circular being Office Memorandum dated 18.09.2014 issued by the Ministry of Personnel, P.G. & Pensions, Department Of Pension & Pensioners' Welfare, Government of India is unconstitutional and opposed to public policy and accordingly the Office Memorandum was quashed. By the same order the Learned Tribunal directed the respondent authorities to apply the circulars dated 30.09.2004 and 11.09.2013 to the respondent Ratna Sarkar to continue disbursing family pension to her treating her as a dependent

daughter of the deceased pensioner with arrears to be released within two months from the date of communication of the order.

3. Now the question which falls for determination is as to whether a daughter of a pensioner who was married, but became widowed after the death of the pensioner is entitled to family pension.
4. Shorn of unnecessary details, the facts which are necessary for adjudication may be stated as under :

Nitya Gopal Das, the father of the respondent Ratna Sarkar was driver/ RHA, Eastern Railway and he retired from service on superannuation on 10.09.1980. He was a railway pensioner and died on 19.05.1985. After the death of her father, her mother Namita Das was a recipient of family pension from the Eastern railway. She died on 05.05 1991.

The petitioner was married to one Hrishikesh Sarkar, but, he died untimely on 03.08.1993.

The petitioner came to learn that the Ministry of Railways, Government of India was sanctioning family pension to the widowed daughter of ex railway employee beyond the age of 25 years. She applied for family pension to the concerned authorities of Eastern Railway. In response to her application the appellant no.5, the Senior Divisional Personnel Officer, Eastern Railway, Sealdah Division, vide Memo dated 03.07.2009 directed the respondent to contact with the concerned office for execution of necessary forms

and documents for grant of family pension in her favour. Accordingly, she submitted all the required documents to the authority concerned. The family pension as applied by her was sanctioned to her with effect from 25.08.2004 vide P.P.O No. 02060661780 giving advice to the Manager, Central Bank of India, Kalyani Branch, Nadia for disbursement of family pension along with arrears thereto to her by the Assistant Divisional Finance Manager, Sealdah, Eastern Railway on 16.08.2010.

But, the appellant no 4, the Divisional Railway Manager, Eastern Railway vide a Memo dated 28.01.2015 discontinued the family pension granted in favour of the respondent with immediate effect vide P.P.O No. 6617 in terms of C.P.O/KKK's Serial No. 125/2014 on the ground that the widowed/divorcee daughter who got widowhood/divorce after the death of the parents would not be considered eligible for family pension. On the other hand, the appellant no 6, the Senior Divisional Finance Manager, Eastern Railway vide Memo dated 11.02.2015 advised the disbursing branch of the concerned bank to discontinue family pension with immediate effect. The respondent submits that the provision for grant of family pension in favour of widowed/divorcee daughter beyond the age of 25 years was made vide office Memorandum dated 30.07.2004 and this provision has been included in clause (III) of sub-Rule 54 (6) of Central Civil Services(Pension) Rules, 1972(in short CCS (Pension) Rules, 1972). It was clarified vide office Memorandum dated 11.09.2013 that if a daughter became

widowed/divorcee during the period when the pension/ family pension was payable to her father/ mother, such daughter on fulfilment of other conditions shall be entitled to family pension. Being aggrieved by the office Memorandum dated 28.01.2015 on discontinuance of family pension the respondent filed an application being no. 350/00728/2015 before the Tribunal. The Learned Tribunal vide order dated 01.06.2015 disposed of the application directing the respondent to make a comprehensive representation to the railway authorities and the railway authorities to dispose of the representation within a period of 30 days from the date of receipt of the representation by a reasoned order. But, the railway authorities, the petitioners herein, rejected her representation maintaining the order of discontinuation of the family pension against her.

5. Being dissatisfied with the aforesaid order of the railway authorities the respondent preferred the aforesaid tribunal application which was allowed by the impugned order.
6. Admittedly and as it appears from the documents on record, Nitya Gopal Das, the father of the respondent retired from service on superannuation on 10.09.1980 and as a retired employee of the railways he used to draw pension. On his demise on 19.05.1985 his widow Namita Das became the recipient of family pension. She died on 05.05. 1991. It is not in dispute that the respondent Ratna Sarkar was married to one Hrishikesh Sarkar who died on 03.08.1993 i.e 2 years after the death of her pensioner mother Namita Das.

7. What we find from the documents on record, on prayer of the respondent, family pension was sanctioned in her favour vide office Memorandum dated 16.05.2010 with effect from 25.08.2004 along with the arrears thereto. The respondent was drawing family pension accordingly since the issuance of the P.P.O. As the record shows, the family pension granted in favour of the respondent was discontinued vide Memo dated 28.10.2012 issued by the appellant no 4, the Divisional Railway Manager, Eastern Railway, Sealdah Division. Simultaneously, communication was made to the concerned bank on discontinuing the family pension to her.
8. As regards sanctioning of family pension to a widow, son or daughter of a pensioner Rule 54 (6) of the CCS(Pension) Rules, 1972 reads as follows:

The period from which the family pension is payable shall be as under :

i) in the case of a widow or widower, up to the date of death or re-marriage, whichever is earlier;

ii) in the case of a son, until he attains the age of 25 years; and

iii) in the case of unmarried daughter until she attains the age of 25 years or until she gets married whichever is earlier.

9. However, it is explained in this Rule that a daughter shall become ineligible for family pension under this sub Rule from the date she gets married. Besides, the family pension payable to a son or daughter shall be stopped if he or she starts earning his/her livelihood.
10. It is evident from the office Memorandum dated 30.08.2004 that provision for grant of family pension was made to a widowed/divorcee daughter beyond the age of 25 years and such provision has been included in clause III of sub-Rule 54(6) of the CCS (Pension) Rules, 1972. However, the aforesaid provision was clarified vide office Memorandum dated 11.09.2013 to this extent that if a daughter became widowed/divorcee during the period when the pension/family pension was payable to her father/mother, such daughter, on fulfilment of other conditions, shall be entitled to family pension. It is spelt therein that this clarification was aimed at correctly interpreting the conditions of eligibility of a widowed/divorcee daughter in terms of the concept of family pension under the CCS (Pension) Rules, 1972. By the office Memorandum dated 18.09.2014 it was clarified that the family pension should discontinue in those cases where it has been sanctioned in pursuance of those office Memorandums, but without taking into consideration that the widowed/divorcee daughter was leading a married life at the time of death of her father/mother, whoever died later and was therefore ineligible for family pension. By this Memorandum dated 18.09.2014 it was clarified that it would be appropriate that

in order to maintain equality before law family pension payable to such daughter should be discontinued. However, recovery of the already paid amount of the family pension would be extremely harsh on them and should not be resorted to.

11. Learned counsel appearing for the respondent has submitted that the office Memorandum dated 18.09.2014 by which the family pension was sanctioned in favour of a widowed daughter of a deceased pensioner is unconstitutional as the Memorandum discriminates a girl child of the deceased on getting family pension.
12. Per contra, Learned Counsel appearing for the petitioners has submitted that the object of family pension under Rule 54(6) of CCS (Pension) Rules, 1972 from the very inception was to take care of an unmarried daughter who lost her father before she attained the age of 25 years or until she got married whichever was earlier. However, this benefit was extended to a widowed/divorcee daughter of the family pensioner beyond the age of 25 years, but such benefit was not available to her if she got married at the time of the death of her pensioner father/mother.
13. A conjoint reading of all the relevant office Memorandums of the Railways in the light of Rule 54(6) of CCS (Pension), Rules shows that it was the intention of the legislature that the benefit of family pension would be extended to an unmarried daughter till she attained the age of 25 years or until she got married whichever is earlier. Such benefit, subsequently was extended to a

widowed/divorcee daughter of a pensioner beyond the age of 25 years.

14. Now let us advert to the contention raised on behalf of the petitioners as to whether a widowed daughter of the family pensioner will be entitled to family pension after the death of her father or mother when she was married.
15. As quoted above, the explanation to Rule 54(6) clearly mandates that a daughter shall become ineligible for family pension under this sub-Rule from the date she gets married. Learned Tribunal by the impugned order quashed the clarificatory office Memorandum dated 18.09.2014 on reasons that the same was unconstitutional and against the policy as it contained elements of discrimination. On quashing of the Memorandum the Learned Tribunal directed the petitioners railway authorities to apply the circulars dated 30.09.2004 and 11.09.2013 to the respondent to continue disbursing family pension to her treating her as a dependent daughter with arrears of pension.
16. Undisputedly, Namita Das, the pensioner mother of the respondent died on 05.05.1991. Hrishikesh Sarkar, the husband of the respondent died on 03.08.1993. Therefore, at the time of the death of her mother the respondent was married.
17. As the legislative intent is demonstrated, the scheme of family pension never included a daughter of a pensioner who was married at the time of the death of the pensioner. The legislature has extended the benefit of family pension to a child/children of a family pensioner on his/her demise

under different circumstances as enumerated in the relevant rule. As an instance, a mentally retarded child is bestowed with the legislative blessings to have family pension throughout his life after the demise of his/her parent. But, such benefit is not extended to a married daughter. Extending family pension to a child in distress of the deceased family pensioner is a policy decision of the government. A daughter who became widowed after the demise after her father/mother does not possess any fundamental or statutory right to claim family pension. In the absence of any legislation in this regard, the benefit of family pension cannot be extended to a daughter of a family pensioner who was married at the time of the death of her father/mother. It will be unwise on the part of this Court to exercise its extraordinary or discretionary power to come to any inference contrary to the policy decision of the Government.

18. The clarificatory office Memorandum dated 18.09.2014 which manifests the very object of family pension enshrined in Rule 54(6) cannot be termed as discriminatory and ultra vires the constitution.
19. In view of the observations as above, the point as raised for determination is answered in the negative.
20. In view of the above, we find that the impugned order passed by the Learned Tribunal is not sustainable in law.
21. Accordingly, the order dated 16.06.2016 passed by the Learned Tribunal in O.A. no. 350/01194/2015 is hereby set aside. Consequently, the Tribunal application is dismissed.

22. The interim order of stay stands vacated.
23. No order as to costs.
24. Urgent certified website copies of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

(Rabindranath Samanta,J.)

I agree,

(Harish Tandon,J.)