



2025:DHC:1746-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI***Date of decision: 17.03.2025***

+ W.P.(C) 6460/2019

RAJ KUMARI

.....Petitioner

Through: Ms. Monica Kapoor, Advocate
with Petitioner in-person.

versus

UNION OF INDIA & ANR

.....Respondents

Through: Mr. Vijay Joshi and Mr.
Shubham Chaturvedi,
Advocates.**CORAM:****HON'BLE MR. JUSTICE NAVIN CHAWLA****HON'BLE MS. JUSTICE RENU BHATNAGAR****NAVIN CHAWLA, J. (Oral)**

1. This petition has been filed challenging the Order dated 26.09.2018 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as, 'Tribunal') in Original Application (OA) No.997/2016 titled ***Raj Kumari v. Union of India & Anr.***, whereby the OA filed by the petitioner herein was dismissed.

2. The petitioner had filed the above mentioned OA praying for grant of the family pension. It was the case of the petitioner before the learned Tribunal that the father of the petitioner, Shri Fateh Singh Sharma, had passed away while being on duty in 1979, leaving behind his wife and seven children, which included the petitioner. After his



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death, the mother of the petitioner was receiving the family pension, till her death on 10.06.1990. Thereafter, as she had left behind one unmarried daughter, the said unmarried daughter started receiving the family pension, which came to be stopped on account of her marriage on 02.12.1992. The petitioner then raised a claim for grant of the family pension with the respondents by contending that though she had married Shri Suresh Kumar Sharma on 23.04.1980, due to certain differences, they started living separately since the year 1986. Shri Suresh Kumar Sharma thereafter filed a petition under Section 13 of the Hindu Marriage Act, 1955, being HMA Case No.13/87, seeking divorce from the petitioner. The said petition was adjourned *sine die* by an Order dated 09.08.1995 passed by the Learned Additional District Judge. Eventually, the petitioner and her husband entered into a settlement agreement before the Mediation Centre at the Tis Hazari Court on 06.01.2009, and decided to part ways by way of a mutual consent divorce. Based on the said settlement, HMA No.118/2009 was allowed *vide* Order dated 27.07.2009 by the Learned Additional District Judge. The second motion was filed, being HMA No.1301/2009, which was also allowed by an Order dated 21.09.2010, and a decree of divorce was granted.

3. The learned counsel for the petitioner submits that the family pension was not granted to the petitioner, only on the ground that she was divorced post the death of her mother/pensioner, who had unfortunately passed away on 10.06.1990. She submits that in terms of the Office Memorandum No.1/13/09-P&PW(E) dated 19.07.2017 issued by the Department of Pension and Pensioners' Welfare,



Ministry of Personnel, Public Grievances & Pensions, the family pension is payable to a daughter even in cases where, though the divorce of the daughter may have taken place post the death of the employee/pensioner, however, the divorce proceedings had been filed prior to the death of the employee/pensioner. She submits that the learned Tribunal has erred in not taking cognizance of the said Office Memorandum.

4. On the other hand, the learned counsel for the respondents reiterates that in the present case, the petitioner, having been granted a decree of divorce only in the year 2010, that is, post the death of the pensioner, was not entitled to the grant of the family pension. He submits that, in fact, even the divorce petition on which divorce had been granted to the petitioner, had been filed only in the year 2009. The learned counsel for the respondents further submits that the petitioner has failed to file any document that would show that the mediated settlement had taken place in the earlier filed divorce petition. He submits that, in fact, there are no documents to show that there was indeed an earlier filed divorce petition against the petitioner. He submits that there is always a possibility that the earlier filed divorce petition, if at all, may have been withdrawn and the parties may have started living together.

5. He submits that the OM dated 19.07.2017 cannot be applied retrospectively.

6. We have considered the submissions made by the learned counsels for the parties.

7. The first issue to be determined is whether a divorce petition



had been filed prior to the death of the mother of the petitioner. The petitioner has placed on record certain documents that show that HMA No.13/87 had been filed by her ex-husband against her, seeking divorce. The same had been adjourned *sine die* by an Order dated 09.08.1995. She has also placed on record a copy of the mutual divorce petition (second motion), being HMA 1301/2009, wherein an averment has been made not only to the effect that she had been living separately from her ex-husband since the year 1986 but also that the parties had entered into an amicable settlement before the Mediation Centre, Tis Hazari Courts, Delhi on 06.01.2009. The learned counsel for the petitioner has submitted that the said mediated settlement had taken place in the earlier filed divorce petition and it is only thereafter that the parties filed a joint petition before the learned Additional District Judge praying for the marriage to be dissolved by mutual consent.

8. From the above, therefore, it is apparent that a divorce petition had been filed even prior to the death of the mother of the petitioner. The submission of the learned counsel for the respondent that the parties may have started living together post the filing of the earlier divorce petition, is merely a presumption and not borne out from any fact or document.

9. This now brings us to the second issue, that is, whether the petitioner would still be entitled to the grant of the family pension.

10. The learned Tribunal has not considered the effect of the Office Memorandum dated 19.07.2017, which *inter alia* provides as under:-

“4. It was clarified that a daughter if



eligible, as explained in the preceding paragraph, may be granted family pension provided she fulfils all eligibility conditions at the time of death/ineligibility of her parents and still on the date her turn to receive family pension comes. Accordingly, divorced daughters who fulfil other conditions are eligible for family pension if a decree of divorce had been issued by the competent court during the life time of at least one of the parents.

5. This department has been receiving grievances from various quarters that the divorce proceedings are a long drawn procedure which take many years before attaining finality. There are many cases in which the divorce proceedings of a daughter of a Government employee/pensioner had been instituted in the competent court during the life time of one or both of them but none of them was alive by the time the decree of divorce was granted by the competent authority.

6. The matter has been examined in this department in consultation with Department of Expenditure and it has been decided to 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 fulfils all other conditions for grant of family pension under rule 54 of the CCS (Pension) Rules, 1972. In such cases, the family pension will commence from the date of divorce.”

11. From the above, it would be apparent that family pension is to be granted even to a divorced daughter in cases where the divorce proceedings have been filed in competent court during the lifetime of the employee/pensioner.

12. The Office Memorandum dated 19.07.2017, not only being



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clarificatory in nature but also a beneficial piece of instructions, has to apply retrospectively. The same is also clear from its own language, wherein it states that various representations have been received from persons who though had been granted the decree of divorce after the date of the death of the employees/pensioner, had pending divorce petitions that had been instituted prior to the death of the employees/pensioner. The decision was taken on these representations. The decision therefore, has to have a retrospective effect.

13. In the present case, as the divorce proceedings had been filed against the petitioner by her ex-husband prior to the death of the mother/pensioner of the petitioner, she would be entitled to the grant of the family pension in terms of the Office Memorandum dated 19.07.2017.

14. Accordingly, the Impugned Order dated 26.09.2018 passed by the learned Tribunal is set aside. The respondents are directed to consider the claim of the petitioner for grant of the family pension in accordance with all applicable rules, and to pass an appropriate order thereon within a period of eight weeks from today. In case the petitioner is found entitled to the grant of the family pension, the arrears thereof be released with effect from the date on which the petitioner made her first application for grant of the family pension, within twelve months of this judgment.



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15. The petition is disposed of in the above terms.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

MARCH 17, 2025

Sc/ab/SJ

Click here to check corrigendum, if any