

**COURT No.2
ARMED FORCES TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA 1460/2017

**Anuradha D/o
Late Shri Charan Singh** **Applicant**

VERSUS

Union of India and Ors. **Respondents**

For Applicant : Mr. J P Sharma, Advocate
For Respondents : Mr. Arvind Patel, Adv for R 1-4 &
Mr. Krishna Kumar Prasad, Adv for R-5

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) Directing the respondents to place the relevant records pertaining to the present O.A. before their Lordships for the proper adjudication in the matter in the interest of justice.

(b) Quash and setting aside the impugned order dt. 03.02.17 (Annexure A/1) issued by the respondents declining the request of the applicant for the grant of family pension with all other consequential benefits ie arrears of family pension with interest etc.

(c) Allow the OA of the applicant with all other consequential benefits admissible to the applicant in accordance with the relevant rules and instructions on the subject with cost.

(d) Any other fit and proper relief may also be granted to the applicant.

2. The facts brought forth through the pleadings on record bring forth admittedly that the applicant Anuradha is the daughter of Ex. 810111 NC (E) Charan Singh and his wife Smt. Jagwati Devi who expired on 03.07.2009 and on 06.01.2008 respectively.

3. The applicant is a divorced daughter of Late NC (E) Charan Singh who had been enrolled in the Indian Air Force on 03.10.1970 and was discharged from service on 31.10.1990 under the clause of “on fulfilling the conditions of enrolment.”

4. After the demise of NC (E) Charan Singh, Ms. Mala, daughter of the said NC (E) Charan Singh who claimed to be unmarried and eligible for family pension sought the grant of the same.

5. However, the said Ms Mala, was allowed to be impleaded as respondent no 5 to the array of parties in the present OA, vide order dated 10.10.2018 in MA 1792/2018, in view of the objection raised by the respondent no 5 vide the counter affidavit dated 18.05.2018. Vide her counter affidavit dated 07.05.2019 in the present OA, Ms. Mala respondent no 5 submitted that she supports the claim of the applicant herein for grant of family pension as the applicant was dependent on the late NC (E) Charan Singh and after the applicant’s marriage on 02.11.2006

due to the apathetic attitude of her husband and his family members she had to go through litigation *inter alia* at PS Mayur Vihar on 25.03.2008 and ceased all marital relations with her spouse pursuant to a settlement on 28.03.2009 whereafter the late NC (E) Charan Singh expired on 03.07.2009. Respondent no 5 vide her prayer in her counter affidavit stated that she is not claiming any family pension as the dependent of her father rather supports the claim of the applicant herein.

6. Ms. Mala, respondent no 5 herein expired on 13.08.2022 as per the death certificate issued by the New Delhi Municipal Council placed on the records as reflected vide proceedings dated 22.04.2024.

7. OA 1171/2016 had been filed by the very same applicant herein, i.e. Anuradha before this Tribunal seeking the grant of family pension in view of DOP&T OM 25/30 Aug 2004 read with OM dated 28.04.2011 and clarification issued by DOP&T vide its OM No. No.1/13/09-P&PW (E) dated 11.09.2013 with all other consequential benefits i.e. arrears of family pension with interest etc, which was declined to her by the respondents.

8. The applicant's request for grant of family pension had been rejected vide an order dated 21.06.2016 of the Directorate of Air Veterans Headquarters on the ground that her father and

mother expired on 03.07.2009 and 06.01.2008 respectively and the decree of divorce between her and her husband was dated 12.04.2014 i.e. after the demise of her father and mother.

9. The applicant had been divorced from her spouse Shri Vijay Kumar vide decree of divorce through mutual consent dated 12.04.2014 in HMA no 224/2014 under Section 13-B (2) of the Hindu Marriage Act, 1955 of the Court of Principal Judge, South Family Courts, Saket Courts Complex, New Delhi.

10. The OA 1171/2016 of the applicant was disposed of by this Tribunal vide order dated 04.10.2016 with observations in para 6 and 7 thereof to the effect:-

“6. We have considered the submissions advanced by learned counsel for the parties and also perused the averments made in the application. The impugned order dated 21.06.2016 has been passed by the Directorate of Air Veterans, Air Headquarters, New Delhi, rejecting the representation dated 13.01.2016 for payment of family pension, on the ground that the divorce decree was passed on 12.04.2014, while the applicant's father and mother had expired on 03.06.2009 and 06.01.2008 respectively and hence the applicant is not entitled to family pension. The respondent authorities, however, while passing the said order did not take into consideration the office memorandum dated 11.09.2013 which provides for grant of family pension to the divorced daughter. Paragraph 4 of the office memorandum, which is relevant for the purpose of present case, is quoted above:-

"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, which 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 of her turn to receive family pension comes."

7. It appears from the aforesaid office memorandum, relevant portion of which has already been quoted above, **that the applicant has to prove that she was dependent on the income of the applicant, within the meaning of "dependent" as defined in paragraph 4 as quoted above, apart from the time since when she was staying with her father, and in the event of proving the same she will be entitled to the family pension despite grant of divorce subsequent to the date of death of her parents.**”,_

(emphasis supplied)

thus observing that all that the applicant was required to establish for the grant of family pension despite grant of divorce subsequent to the date of death of her parents that she was a dependent in terms of para 4 of the Office Memorandum dated 11.09.2013 of the respondents, **irrespective of the aspect that divorce was granted to her subsequent to the date of death of her parents.**

11. Vide order dated 04.10.2016 in OA 1171 of 2016, the said OA filed by the applicant was disposed of with permission granted to the applicant to file a fresh application within a month from the date of the said order before the appropriate authority giving details of her stay with her father and whether she was dependent on the income of the father.

12. It was further observed vide para 9 of the said order dated 04.10.2016 in OA 1171/2016 to the effect:-

“9. That being the position, we dispose of the OA allowing the applicant to file a fresh application within one month from today before the appropriate authority giving details of her stay with her father and whether she was dependent on the income of the father, which is necessary. It also appears from the pleadings in the OA that the applicant had filed an application for grant of maintenance. We however, do not know whether such maintenance was granted as nothing has been placed on record either allowing or rejecting the prayer for maintenance. It may, however, be mentioned that in the divorce decree passed by the learned Principal Judge, Family Court that mention has been made relating to the amicable settlement of their claims and disputes relating to present and future maintenance, which, however, itself would not disentitle the applicant to claim the family pension as the word "dependent" has been defined in paragraph 4 of the office memorandum dated 11.09.2013 as a child who is not earning equal to or more than the sum of minimum family pension and dearness relief thereon.”

13. Vide para 10 of the said order dated 04.10.2016 in OA 1171/2016, it was further directed to the effect:-

“10. The respondent authority within two months from the date of receipt of the said representation shall pass a speaking order having regard to the relevant provisions and the office memorandum issued by the Government of India from time to time as well as the

observation made hereinabove. Needless to say that if the applicant has still any grievance, it is open to her to approach this forum again.”

14. The applicant submitted a representation dated 27.11.2016 to the respondents pursuant to order dated 04.10.2016 of this Tribunal in OA 1171 of 2016. Vide the impugned order herein in the present OA dated 03.02.2017 Air HQ/99798/2/810111/HD/DAV, the said representation dated 27.11.2016 of the applicant was rejected by the respondents holding that the applicant's claim for grant of family pension was not admissible.

15. Vide para 13 of the said impugned order it was stated to the effect:-

”13. AND WHEREAS, on careful examination of your case in accordance with Gol, MoD letter No. 1/13/09-P&PW (E) dated 11 Sep 13 and PCDA (P), Circular No. 123 it is observed that:-

(a) Gol, MoD letter No. 1/13/09-P&PW (E) dated 11 Sep 13 and PCDA (P), Circular No. 123 brings out clarification regarding eligibility of a daughter who became widowed/divorced after the death of the employee/pensioner.

(b) Para 4 of the ibid mention Gol OM dated 11 Sep 13 states that, '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'. It also states that, 'family pension to a widowed/divorced daughter is payable provided she fulfils all eligibility conditions

at the time of death/ineligibility of her parents and on the date her turn to receive family pension comes.

(c) Hence as per Sub Para-(b) above, even if Smt Anuradha fulfils the dependency criteria in terms of her income, she does not fulfill the major condition of being dependent on her father at the time of his death, i.e. Principal Judge, South, Family Courts had issued divorce decree on 12 Apr 14 whereas NC(E) Charan Singh expired on 03 Jul 09.

(d) Further, Para 8 of OA No. 1171/2016 states that, 'the year from which the applicant stated to have lived with her father i.e. 2008 is contrary what the learned Principal Judge, South, Family Courts has recorded in the aforementioned judgment dated 12.04.2014, wherein it has been mentioned that the applicant and her husband were living separately since July 2009'.

(e) Also, as per the service records of Late NC(E) Charan Singh held at this directorate your name is not recorded as his daughter."

16. The applicant vide the present OA has submitted to the effect that a complaint at P.S. Mayur Vihar was lodged by her with the police authorities with the Women Cell against her husband and his family members in view of harassment meted out to her to which her husband lodged a non-complaint (FIR) at PS Mayur Vihar on 25.03.2008 and that on 28.03.2009, the settlement was arrived at to the effect:-

"Today on dt. 28.03.09 this meeting is convened in reference to make a settlement between Vijay Kumar & Anuradha.

Anuradha has told that she does not wish to living with his family due to their different opinion thereby it creates conflict between us and I always remained in dilemma.

As per Vijay she does not indulge in family (Home) works rather has been indulging in quarrelling with my family members and thereby all of my family members always remain in problems.

In my absence she went away to her prenatal house at Sangam Vihar stealthily taking all the ornaments including Rs. 50,000/-, when

I visited there to call her back she quarreled with the help of five to seven persons with me and when I ask to return my 50,000 rupees including the ornaments her elder sister told that all the ornaments had already been sold including all the rupees have been spent for the treatment of their father thus nothing would be returned at that time nor thereafter also. After returning subsequently I have lodged FIR at PS Mauyr Vihar on dt. 25.03.09.

Today on dt. 28.03.09 in presence of both the parties it is decided that both the parties would be doing their works separately without any interference of the other party. Anuradha if you do not want to live with him you are free to have remarriage and start a new life with any other similarly Vijay, if she does not want to live with you, you can also restore your life and therefore you would not be perusing further with this FIR registered with the police authority.”

17. The applicant vide para 4.4 of the OA submits that she had already been living with her father from January 2008 in her parental home along with her father Ex NC (E) Charan Singh who had retired from the Indian Air Force and she became totally dependent on him from **28.03.2009**, i.e. the date on which the settlement was arrived at mutually between her and her spouse and that her father Ex NC (E) Charan Singh subsequently expired on **03.07.2009**.

18. The applicant has further submitted that she had also filed an application under Section 125 of the CrPC, 1973 due to financial crisis and subsequently a petition u/S 13 (B) (1) of the HMA 1955, bearing no. 582 of 2013 and then a petition u/S 13 (B) (2) of the HMA 1955, bearing no. 224/2014 were filed by her

and her erstwhile spouse and the marriage was finally dissolved vide judgment and decree dated 12.04.2014 in HMA 224/2014.

19. As per the judgment dated 12.04.2014 of the Principal Judge, South Family Courts, Saket Courts Complex, New Delhi in HMA 224/2014 under Section 13 (B) (2) of HMA 1955, the terms and conditions of the mutual consent divorce were incorporated in Exhibit P1 annexed to the petition bearing no. HMA 224/2014 in relation to which it was stated by the applicant to the effect:-

“We have settled all our disputes and claims with regard to the stridhan and the past, present and future maintenance of petitioner No. 1 as per the terms and conditions mentioned in our petition i.e. Ex. P-1, which bears the signature of petitioner No. 1 at point A and signature of petitioner No. 2, at point B.”,-

whereby thus there were no claims left for any past, present and future maintenance of the applicant herein against her erstwhile spouse.

20. The respondents have sought to contend that the applicant had not been divorced till the date of demise of her father who expired on 03.07.2009 in as much as she was divorced only on 12.04.2014 by the decree of divorce through mutual consent dated 12.04.2014 in HMA 224/2014 thus in terms of the GoI MoD Policy letters no. 1(9)/2013-D (Pen/Policy) dated 17.11.2017 & no. 1/13/09-P7&PW(E) dated 19.07.2017 which is

to be applied *mutatis mutandis* to divorced daughters of the Armed Forces personnel, the applicant is not entitled to the grant of the family pension.

ANALYSIS

21. In relation to these submissions made by the respondents, as depicted in para 20 hereinabove, it is essential to observe that vide order dated 23.05.2023 of the AFT (PB), New Delhi in OA 1209 of 2019 in the case of **Smt Asha D/o Late Ex Sgt PC Singh** vs **Union of India & Ors**, it has been categorically observed vide paras 24 to 29 to the effect:-

***“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.”,-

and **thus, the MoD policy letter dated 17.11.2017 no. 1(9)/2013-D(Pen/Policy) which creates an artificial distinction between a divorced daughter of a deceased petitioner whose spouse has also expired on the basis of the date of institution of the divorce proceedings *de hors* the aspect of dependence of the divorced daughter of the deceased pensioner and her spouse has been held by this Tribunal to be wholly violative of Article 14 of the Constitution of India.**

22. Furthermore, it had also been observed vide para 7 of the order dated 04.10.2016 in OA 1171 of 2016, i.e. the previous application filed by the applicant to the effect:-

*“7. It appears from the aforesaid office memorandum, relevant portion of which has already been quoted above, that the applicant has to prove that she was dependent on the income of the applicant, within the meaning of "dependent" as defined in paragraph 4 as quoted above, apart from the time since when she was staying with her father, **and in the event of proving the same she will be entitled to the family pension despite grant of divorce subsequent to the date of death of her parents.**”*

23. As regards the contention raised by the respondents that the applicant had professed through the application under

Section 125 of the CrPC M- 426/2011 filed by her on 04.09.2010 before the Addl CMM Patiala House Courts that she had been turned out from the matrimonial home in January 2008 and that since January 2008, she had been residing at the house of her elder sister in Sangam Vihar and that her spouse had totally neglected to pay anything for her maintenance, coupled with the submission of the respondents that as observed vide para 4 of the judgment dated 12/04/2014 in HMA 224 of 2014 under 13 (b) (2) of the HMA, it had been recorded therein to the effect that the petitioners thereof i.e. the applicant and her spouse were living separately since July 2009 due to irreconcilable differences and had not resumed cohabitation thereafter, it is essential to observe that the applicant herein has submitted to the effect that she had made a complaint at the Women Cell pursuant to which her spouse got an FIR registered at Police Station Mayur Vihar on **25/3/2008** and a settlement had been arrived at between the parties before the police authorities and whereas from both sides on **23.08.2009**.

24. It can also not be overlooked that even if the applicant had stated in her proceedings under Section 125 of the CrPC,1973 that she had started living with her elder sister in Sangam Vihar, the same does not detract from her submissions through the

present OA that she started living in her parental home with her father from March 2009.

25. Even the observations in the order dated 12/4/2014 in HMA 224 of 2014 of the Court of Principal Judge, South Family Courts, Saket Courts Complex, New Delhi relate to the applicant and her spouse living separately from July 2009 at least. The father of the applicant had also expired on 3/7/2009.

26. Taking the totality of the circumstances of the case put forth on record through averments made in the OA, which have not been effectively refuted by the respondents, the contention of the applicant that she had commenced living at her parental home before the demise of her father and was dependent on her father from 28.03.2009 at least, cannot be overlooked in the circumstances and is accepted.

CONCLUSION

27. In the circumstances, the applicant, who is a divorced daughter of a deceased Armed Forces Personnel, in terms of the order dated 23.05.2023 of the AFT (PB), New Delhi in OA 1209 of 2019 in the case of **Smt Asha D/o Late Ex Sgt PC Singh** (supra) is held entitled to the grant of family pension and all consequential benefits thereto from a period of three years prior to the institution of OA 1171 of 2016 as had been filed by the

applicant on 12/09/2016 before this Tribunal whereafter she has been persistently agitating her rights by filing the requisite representation dated 27.11.2016 in terms of the order dated 04/10/2016 of this Tribunal which was rejected by the respondents vide the impugned order dated 03.02.2017 pursuant to which the applicant filed the present OA 1460 of 2017 on **02/08/2017** as diligently.

28. The Corrigendum PPO be accordingly issued and arrears be paid within two months from the date of receipt of this order failing which, interest @ 6% p.a. would be liable to be paid by the respondents to the applicant on all arrears till the date of payment.

Pronounced in the open Court on 19th day of May, 2025.

[REAR ADMIRAL DHIREN VIG]
MEMBER (A)

[JUSTICE ANU MALHOTRA]
MEMBER (J)

AP