

Form No. 4
{See rule 11(1)}
ORDER SHEET

ARMED FORCES TRIBUNAL, REGIONAL BENCH, MUMBAI

26. O.A. No. 101 of 2020 with M.A. No. 24 of 2020

**Smt. Anandabai alias Anita Sakharam Nhavi divorced daughter of
Late Naik Sakharam Nhavi**

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Others

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>19.10.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p>1. Heard Mr. Yogendra Pratap Singh, Ld. Counsel for the applicant and Mr. B.K. Ashok, Ld. Counsel for the respondents.</p> <p>2. This application has been filed by the applicant for the grant of family pension to her w.e.f.03.09.2012, the date when decree of divorce was passed between her and her ex husband Shri Atmaram Tukaram Dhapse.</p> <p>3. Factual matrix of the case are that applicant is the divorced daughter of late No. 4539744-H Nk. Sakharam Nhavi. She was married to Shri Atmaram Tukaram Dhapse on 13.05.1989. There being matrimonial discord between her and her husband she got mutually separated with her husband on 13.09.1991 through customary divorce and started living with her parents in her parental house as she was fully dependent upon them. Her mother pre deceased her father on 07.02.2006 and her father died on 07.10.2011. Before death, she had approached Zila Sainik Welfare office Buldana, along with her father, to get her name entered as NOK (being divorced daughter) in PPO issued to her father, whereupon she was told to obtain a decree of divorce from a competent court as customary divorce was not acceptable for the grant of family pension to a divorced daughter. But before the suit for the decree of divorce could be filed her father died. Thereafter, she filed suit for the decree of divorce on 30.11.2011 which was decreed on 03.09.2012. After decree of divorce being passed, applicant moved application for the grant of family pension being divorced daughter but the same was declined, hence this application was filed.</p> <p>4. It is submitted by learned counsel for the applicant that applicant is the divorced daughter of late Nk Sakharam Nhavi. She was married to Shri Atmaram Tukaram Dhapse on 13.05.1989. There being lack of understanding between the applicant and her husband, they both got separated with each other through customary divorce on 13.09.1991 whereafter she returned to her parental house and started living with her parents. She having no source of income was fully dependent on her father. Her mother pre deceased her father on 07.02.2006 and her father died on 07.10.2011, whereafter she was left all alone and is leading the life of destitution.</p> <p>5. He further submitted that before death, applicant had gone to Zila Sainik Welfare Office Buldana along with her father for getting her name entered as NOK</p>

(being divorced daughter) in the PPO issued to her father, where she was told to obtain decree of divorce from competent court of law as customary divorce was not acceptable for entering her name as NOK for the grant of family pension being a divorced daughter. But before the suit could be filed her father died. Thereafter, the suit was filed which was decreed on 03.09.2012. Applicant then moved application to the army authorities for the grant of family pension which was rejected as her case was not covered under policy. He submitted that applicant's claim for the grant of family pension has been wrongly rejected, as from the judgement passed in the suit of divorce it has been held that applicant had separated from her husband since 13.09.1991 i.e. much before the death of her both parents and was fully dependent on her parents as she had no source of income and in that case her claim ought to have been allowed instead of being rejected in the garb of being not covered under policy. The policy has been formulated to provide support and livelihood to divorced daughters of Ex-servicemen who have no income of their own treating them to be family members even after marriage. The policy being a benevolent policy should be interpreted leniently, keeping in view the objective for which it was issued rather than adopting a hyper technical view for rejecting the claim as in later's case the very purpose of the policy would be defeated. He further submitted that had policy been rightly interpreted in the case of the applicant then she would be granted family pension from the date when decree of divorce was passed i.e.03.09.2012.

6. He has placed reliance on the judgement of Bombay High Court in the case of ***Union of India & Another Vs. Usha Eknath Patil***, reported in 2018 Mh.L.J. and of Central Administrative Tribunal, Jodhpur Bench in Original Application No.290/00342/2016, ***Smt. Kiran Vs. Union of India & Others*** decided on 01.10.2018. In case of ***Usha Eknath Patil*** (Supra) the facts of the case were that daughter of the deceased railway employee was divorced with her husband through customary divorce on 21.07.1992 and was residing with her widowed mother till death of her mother on 28.12.1999. The Bombay High Court held that though customary divorce is not legally recognised but facts show that from the date of customary divorce the daughter was not residing with her husband but with her mother and was therefore member of the family of her deceased father and as such entitled to family pension after the death of her mother. It has been held that if a married girl is living together with her parents in their house then it can be reasonably believed that she has been separated from her husband. He submitted that in view of above position of law regarding divorce, respondents ought to have taken the fact into account that applicant was living along with her parents in their house since 13.09.1991 and on account of which they could have treated her to be separated from her husband through customary divorce since the date of customary divorce and allowed her claim for the grant of family pension being a divorced daughter fully dependent upon her father from the date of customary divorce rather than rejecting the claim holding she was not dependent upon her father.

7. He further submitted that in cases for the grant of family pension to a divorced daughter having no income of her own, a pragmatic view should be taken rather than rejecting the claim based on hyper technical view. In the case in hand it is established from the evidence that applicant is a divorced daughter who was living separately from her husband since long i.e.13.09.1991, with her father, which was sufficient to infer

that she was mutually divorced through customary divorce rather than holding her to be divorced after the death of her father and decide her dependency in the negative. Applicant took legal divorce from her husband with oblivious reasons as customary divorce is not recognised in law, therefore, date of legal divorce cannot be a decisive factor for deciding her dependency rather decisive date is one from when she was separated from her husband and started living with her parents.

8. Per contra, learned counsel for the respondents submitted that applicant's claim for the grant of family pension was rejected not because her divorce was granted after the death of Ex-serviceman but because suit of divorce being filed after the death of father of the applicant her case was not covered under the policy. As per policy for the grant of family pension to a married daughter, either decree of divorce should be passed either during lifetime of at least one of the parents or suit for decree of divorce filed during lifetime of pensioner or his/her spouse. He submitted that since in case of applicant neither decree of divorce was passed during lifetime of at least one of his parents nor suit for decree of divorce filed during life time of her father, the pensioner, her case was not covered under the policy and hence, her claim was rejected.

9. He submitted that it is absolutely incorrect that hyper technical view was adopted in the case of applicant while rejecting her claim. Family pension to divorced daughter of Ex-serviceman is provided vide Government of India, Ministry of Personnel, P.G. & Pensions Department of Pension & Pensioners' Welfare, New Delhi Letter No. 1/13/09-P&PW(E) dated 19 July 2017 which clearly states that a divorced daughter of Ex-serviceman would be eligible for family pension, if either she got divorced during the lifetime of at least one of the parents or filed a court case for her divorce during the lifetime of pensioner or his or her spouse. None of the above two conditions necessary for the grant of family pension to a divorced daughter existed in the instant case therefore claim was rejected which is not unjust in any manner.

10. Rulings relied upon by learned counsel for the applicant are not applicable in the case due to different facts and the circumstances. In case of **Usha Eknath Patil** (Supra) customary divorce of daughter of deceased railway employee had taken place before death of her widowed mother which was taken as ground for deciding daughter to be family member of the deceased employee for the grant of family pension whereas in the present case plea of customary divorce was not taken in suit filed for the decree of divorce, but it has been taken in Original Application to claim the benefit of the ruling. Further, no reason has been assigned why no effort was taken for entering name of the applicant as NoK in PPO for long twenty years. Similarly, customary divorce in case of **Smt Kiran** (Supra) had taken place much before the death of her parents whereas it is not so in the present case as had it been, this fact would certainly have been stated in the suit for divorce and also the applicant's father would have approached army authorities immediately after customary divorce, for entering applicant's name in the PPO.

11. It is not disputed that family pension to divorced daughters of Ex-servicemen was earlier not applicable being not member of family. It was made applicable vide Government of India, Ministry of Personnel, P.G. & Pensions Department of Pension & Pensioners' Welfare, New Delhi Letter No.1/13/09-P&PW(E) dated 19 July 2017 which reads as under-

"No. 1/13/09-P&PW (E)
Government of India Ministry of Personnel, P.G. & Pensions
Department of Pension & Pensioners' Welfare

3rd Floor, Lok Nayak Bhawan,
Khan Market,
New Delhi,
19th July, 2017.

OFFICE MEMORANDUM

Sub: Eligibility of divorced daughters for grant of family pension - clarification regarding.

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.

2. *As indicated in Rule 54(8) of the CCS (Pension) Rules, 1972, the turn of unmarried children below 25 years of age comes after the death or remarriage of their mother/father, i.e., the pensioner and his/her spouse. Thereafter, the family pension is payable to the disabled children for life and then to the unmarried/widowed/divorced daughters above the age of 25 years.*

3. *It was clarified, vide this department Office Memorandum of even number, dated 11th September, 2013, 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.*

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 - provi 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.*

7. *This issues with the concurrence of Ministry of Finance, Department of Expenditure, vide their ID No. I(I 1)/EV/2017, dated i 11 July, 2017.*

Sd/-
(D.K. Solanki)
Under Secretary to the Government of India
Tel. No. 24644632"

12. A reading of letter shows that a divorced daughter of Ex-servicemen would be eligible for family pension, if she either got divorced during lifetime of at least one of the parents or filed a court case for her divorce during lifetime of the pensioner or his or her spouse. The object behind issuing this letter is to provide support by granting family pension to a divorced daughter who loses being part of family of Ex-servicemen after her marriage. It was seen that divorced daughters having no means of own livelihood were residing with their parents under constant fear of their future survival. This was the reason Government of India came forward with scheme to provide family pension to them treating to be member of family of Ex-servicemen even after their divorce. Since object of the letter is to provide family pension to the divorced daughters of the Ex-servicemen to save them from becoming destitute. This being the objective behind the grant of family pension, decisive factor for the grant should not be the date when decree of divorce is granted rather it should be the dependency. If daughter was dependent upon the pensioner, she should be granted family pension irrespective of whether she was divorced during lifetime of at least one of her parents or the court case for the grant of divorce was filed during lifetime of pensioner or his/her spouse.

13. In case of **Usha Eknath Patil** (Supra), respondent Usha Eknath Patil was the daughter of a railway employee Eknath Patil who expired on 16.02.1982. Her marriage took place in the year 1979. Due to matrimonial discard she got separated from her husband through customary divorce and started living with her mother Vatsala since 21.07.1992. Her mother expired on 28.12.1999. Her legal divorce was granted on 29.11.2010. Her claim for the grant of family pension was allowed by the Central Administrative Tribunal on the premise that since she had separated from her husband on 21.07.1992 and thereafter she was residing with her mother, she was the family member of her father Eknath Patil and as such entitled to family pension which was affirmed by the Bombay High Court. Para Nos. 19 and 22 of the judgement are reproduced as under-

“19. Here, fact of customary divorce is not in dispute. The competent Civil Court has on 29-11-2010 in recognition of customary divorce and separate stay from 21-7-1992 dissolved marriage. Thus, fact that daughter Usha was not residing with her husband since 21-7-1992 has been accepted by competent Court. The Central Administrative Tribunal in Original Application on 27-11- 2015 has accepted this finding of Civil Court. The petitioner - railways could not displace that finding even during review proceedings.

22. In present facts, though customary divorce on 21-7-1992 may not be legally recognized, facts show that from said date Usha was not residing with her husband and was therefore member of family of her deceased father. She was therefore a destitute residing with her mother Vatsala who expired on 28-12-1999. When the provision entitles unmarried or a divorced or a widowed daughter to family pension, we find that Usha is definitely covered thereunder.

14. The facts of the case show that applicant Anandbai @ Anita Sakharam Nhavi was married to Atmaram Tukaram Dhapse on 13.05.1989. There being matrimonial discord she got separated with her husband through customary divorce on 13.09.1991 and started living in her parental abode. Her father late Nk. Sakharam Nhavi died on 07.10.2011 and her mother pre deceased to her father on 07.02.2006. She filed a divorce petition in the court of Civil Judge, Senior Division for decree of divorce on 30.11.2011 which was allowed on 03.09.2012 and legal divorce was granted between

her and her husband.

15. Judgement dated 03.09.2012 passed in Hindu Marriage Petition No. 253 of 2011 by 2nd Joint Civil Judge, Senior Division, Buldana has been filed as Annexure-6 and it shows that it was a joint petition filed by the applicant and her husband stating that their marriage was solemnised in 1989 and there being differences between them they started living separately with each other. After separation, applicant was living at her parental abode and there being no possibility of reunion they filed petition for dissolution of their marriage which was allowed on 03.09.2012. In joint petition, since divorce was sought by mutual consent of both parties, the same was allowed.

16. Though customary divorce is not recognised for the grant of family pension, it is nowhere mentioned in the judgement that applicant and her husband were separated with each other on 13.09.1991 by customary divorce and even kind of custom prevalent in their society for the grant of divorce is also not stated. It is also not mentioned that petition for grant of decree of divorce was necessitated to be filed because customary divorce was not considered for family pension. This creates a lot of doubt about genuineness of the divorce as petition for divorce was filed after more than twenty years of the so called separation and that too after the death of the pensioner.

17. Except for oral assertions, nothing of evidence such as voter identification card, Aadhar card, ration card or any other document has been filed on record to show that applicant was residing with her parents at her parental abode since the day of separation i.e.13.09.1991 which also heavily goes against the applicant and makes it difficult to believe her case that she was separated from her husband through customary divorce on 13.09.1991 and thereafter lived with her father as destitute till death of father which took place on 07.10.2011.

18. As per applicant, she was living with her father as a dependent since 13.09.1991 and her mother died on 07.02.2006. If applicant's mother died on 07.02.2006 and thereafter she became next of kin of her father to receive family pension after her father's death, she ought to have approached Zila Sainik Kalyan Office for getting her name entered in PPO immediately after her mother's death and she should not have waited till the end of 2011 for this. Since applicant did not approach Zila Sainik Kalyan Office then and there after the death of her mother but soon before her father's death which took place more than five and half years after her mother's death, this also creates a lot of doubt about applicant's claim for the grant of family pension being member of family of the deceased pensioner.

19. If we have a close look at the case of the applicant we find that except a decree of divorce there is nothing in support of claim to establish that applicant was dependent on her pensioner father since 13.09.1991, the date she claims to have been separated from her husband by customary divorce. The legal divorce between applicant and her husband has no doubt been granted after the death of her father, the pensioner, but even the petition for the grant of divorce was filed after the death of pensioner whereas applicant's mother had died much before and this raises lot of doubt as if legal divorce was collusively obtained to support the claim for the grant of family pension after the death of pensioner. In the circumstances, we are not inclined to allow the claim more so when it is not covered under the policy for the grant of family pension to a divorced daughter. In the result, Original Application is devoid of

merit and deserves to be dismissed as such.

20. Accordingly, Original Application is **dismissed**. No order as to costs.

21. Pending application(s), if any, also stands disposed of.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

AKD/-