



A HANDBOOK
ON
FAMILY PENSION
under CCS (Pension) Rules, 1972
Synopsis and Case Studies

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INTRODUCTION

The family pension under Rule 54 of the CCS (Pension) Rules is in the nature of a welfare scheme framed to provide relief to the widowed spouse & children of a deceased employee or pensioner.

The employee has no control over the family pension as he is not required to make any contribution to it. It is not a property of the deceased employee/pensioner, therefore the entitlement for family pension cannot be decided by succession certificate.

The rules do not provide for any nomination, instead it designates the persons who are entitled to receive family pension. Thus, no other person except those designated under the rules is entitled to receive family pension.

1. FAMILY

- (i) As soon as a person enters in Government service, he/she is required to furnish details of his /her family in Form 3 to the Head of Office.

(sub Rule (12)(a) of Rule 54)

- (ii) If the Government servant has no family, he shall furnish the details in Form 3 as soon as he acquires a family.

(sub Rule (12)(a) of Rule 54)

- (iii) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person, Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage.

(CCS conduct Rules 21)

- (iv) For the purpose of grant of family pension, the family shall be categorized as below -:

- Spouse
- Children
- Parents
- Disabled Sibling

However their eligibility to receive family pension will be governed by orders issued from time to time.

(sub Rule 6 of Rule 54)

2. ELIGIBILITY OF SPOUSE

- (i) Family Pension is payable to widow or widower up to the date of death or re-marriage, whichever is earlier.

(sub Rule 6 of Rule 54)

- (ii) Family pension will continue to be payable to a childless widow on re-marriage, if her income from all other sources is less than the amount of minimum family pension and the dearness relief admissible.

(sub Rule 6 of Rule 54)

3. ELIGIBILITY OF CHILDREN

- (i) Family pension to the children shall be payable in the order of their birth and the younger of them will not be eligible for family pension unless the elder next above him/her has become ineligible for the grant of family pension.

(sub rule 8(iii) of Rule 54)

- (ii) Where the family pension is payable to twins, it shall be paid to such children in equal share.

(sub rule 7(d) of Rule 54)

- (iii) In the case of an unmarried son family pension will be payable until he attains the age of twenty-five years or until he gets married or until he starts earning his livelihood, whichever is the earliest.

(sub rule 6(ii) of Rule 54)

- (iv) In case both wife and husband are governed by the provisions of family pension 1964, the surviving child or children shall be granted the two family pensions in respect of the deceased parents.

(sub Rule 11 of Rule 54)

- (v) Family pension admissible to a beneficiary in respect of one deceased employee or pensioner is not to be counted as income for the purpose of determination of eligibility for another family pension which is admissible in connection with another deceased employee or pension.

(DoP&PW O.M. No 1/11/2011-P&PW 30th November 2011)

- (vi) A child adopted by the spouse of the pensioner shall not be treated as a member of the family of the deceased pensioner.

(DoP&PW O.M. No 1/27/2011-P&PW dated 1st July 2013)

4. ELIGIBILITY OF DISABLED CHILD

- (i) If the son or daughter of a Government servant is suffering from any disorder or disability of mind (including mentally retarded) 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.

(sub-rule 6 of Rule 54)

- (ii) The family pension is payable to the disabled children for life after the youngest child attains the 25 years of age years. Thereafter family pension shall be resumed in favour of the child suffering from disability.

(sub rule 6 of Rule 54)

- (iii) The name of disabled child /permanently disabled, sibling will be added to the PPO issued to the retiring Government servant if there is no other eligible prior claimant for family pension.

(OM 1/27/2011-P&PW dated 1stJuly 2013)

- (iv) Non-intimation of physical/mental handicap does not make a child ineligible for family pension. A disability certificate issued after the death of the employee /pensioner or his/her spouse for a disability which existed before their death may be accepted by the Appointing Authority.

(DoP&PW OM 1/18/2001-P& PW dated 25th/26th January 2016)

- (v) The family pension shall be paid to such son or daughter through the Guardian if he or she is a minor.

(DoP&PW OM 1/47/87-P& PW date 30th March 1989)

- (vi) The Government has decided to allow continuance of family pension to mentally/physically disabled children even after their marriage.

(DOP&PW's O.M No.1/33/2012-P&PW(E) dated 16/01/2013)

- (vii) Guardianship Certificate issued by the Local Level Committee constituted under the provisions of the National Trust Act, 1999, for the purpose of grant of family pension in respect of child suffering from the disabilities of mind (including mentally retarded), will be accepted.

(DoP&PW OM 1/4/06-P& PW date 31st July 2006)

- (viii) It shall be the duty of the Guardian or son or daughter to furnish a certificate to the Treasury / Bank, as the case may be, every year to the effect that (1) he / she has not started earning, his / her livelihood; and (2) not yet married. However in case of disability, child or the guardian is required to produce the certificate in every five years to the effect that he/she continues to suffer from the disability or disorder of mind or continues to be physically crippled or disabled.

(Sub rule 6 of Rule 54 of the CCS (Pension) Rules, 1972)

5. ELIGIBILITY OF DIVORCED / WIDOWED / UNMARRIED DAUGHTER

- (i) The family pension is payable to the unmarried / widowed / divorced daughters until she gets married or remarried or until she starts earning her livelihood, whichever is earlier.

(sub rule 6(iii) of Rule 54)

- (ii) The family pension is payable to the unmarried / widowed / divorced daughters above the age of 25, after all unmarried children have attained the 25 years of age or started earning their livelihood whichever is earlier. If the deceased government servant/pensioner has survived by any disabled child, the widowed/divorced/unmarried daughter will be eligible to receive family pension only after the turn of disabled child.

(DoP&PW OM 1/13/09-P& PW date 11th September 2013)

- (iii) Divorced daughter is eligible for family pension where the divorce proceedings had been filed in a competent Court during the lifetime 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.

6. ADMISSIBILITY OF FAMILY PENSION CLAIM IF GOVERNMENT SERVANT HAS SURVIVED BY WIDOWS AND CHILDREN FROM BOTH WEDLOCKS

- (i) As per CCS conduct Rules 21 no Government servant having a spouse living, shall enter into, or contract, a marriage with any person, Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage.
- (ii) As per section 11 of Hindu Marriage Act any marriage shall be null and void if the party has a spouse living at the time of the marriage.
- (iii) The divorce proceeding as per custom of the community or before the Panchayat is not valid. The divorce decree is acceptable only if it is ordered by competent court.

***(Section 19 of the Hindu Marriage Act &
The Family Courts Act, 1984)***

- (iv) However by virtue of Section 16 of the Hindu Marriage Act notwithstanding that marriage is null and void, any child of such marriage shall be legitimate.
- (v) If deceased employee is survived one widow and children from first wife, however second marriage was solemnized after first wife was not alive, Family pension will be shared equally by widow being legally wedded wife along with child from first wedlock i.e. 50% each.

(sub rule 7(c) of Rule 54)

- (vi) If deceased employee is survived by one widow and children from first wife, however second marriage was solemnized after getting divorce decree from first wife, Family pension will be shared equally by Second widow being legally wedded wife along with child from first wife i.e. 50% each.

(sub rule 7(c) of Rule 54)

- (vii) If deceased employee is survived by more than one widow and children from both wedlock, family pension will be shared equally by first wife being legally wedded wife along with child from second wedlock i.e. 50% each. However second widow will not have any claim for family pension as second marriage is null and void and she is not holding the status of legally wedded wife.

(DoP&PW O.M 1/16/1996-P& PW dated 27th November 2012)

- (viii) The eligibility of each child sharing pension along with legally wedded wife will be considered as per Rule 54(8) (iii) .Their claim will be considered in the order of their birth ,and the younger of them will not be eligible for family pension unless the elder next above him become ineligible for the grant of family pension.
- (ix) On the death of a legally wedded wife who is not survived by any eligible child, share of the family pension would not lapse but would be payable to children from second wedlock in full i.e. 100%.

(sub rule 7(b) &7(c) of Rule 54)

- (x) If children from second wedlock become ineligible to receive pension, such share of the family pension would not get lapsed but would be payable to legally wedded wife or her children as the case may be in full i.e. 100%.

(sub rule 7(b) & 7(c) of Rule 54)

7. ELIGIBILITY OF JUDICIALLY SEPARATED SPOUSE

After the child or children cease to be eligible for family pension under this rule, such family pension shall become payable to the surviving judicially separated spouse of the deceased Government servant till his or her death or remarriage, whichever is earlier.

(sub rule 11 of rule 54)

8. ELIGIBILITY OF PARENTS

- (i) Family pension to the parents shall be payable if the parents were wholly dependent on the Government servant and the deceased Government servant is not survived by a widow or an eligible child.

(sub rule 10-A (a) of Rule 54)

- (ii) The family pension, wherever admissible to parents, will be payable to the mother of the deceased Government servant failing which to the father of the deceased Government servant.

(sub rule 10-A (a) of Rule 54)

- (iii) The family pension to the parents will be payable for life.

(sub Rule 6 of 54)

- (iv) The names of dependent parents may be added to the PPO issued to the retiring Government servant if there is no other eligible prior claimant for family pension other than the spouse.

(sub rule 10-A (a) of Rule 54)

9. ELIGIBILITY OF DISABLED SIBLING

Disabled siblings may be eligible for family pension if they are wholly dependent upon the government servant immediately before his/her death and deceased government servant is not survived by widow or eligible children or parents.

(sub Rule 10 B of 54)

10. RATE OF FAMILY PENSION

(i) The amount of family pension shall be fixed at monthly rates and be expressed in whole rupees. Where the family pension contains a fraction of rupees, it shall be rounded off to next higher rupees.

(sub rule 2 A of Rule 54)

(ii) In case government employee died while in service, family pension will be paid at enhanced rates i.e. 50% of pay last drawn for a period of 10 years. Thereafter family pension will be paid at the rate of 30% of the last pay.

(sub rule 3(i) of Rule 54)

(iii) If family pension is authorised to parents, it will be paid at the rate of 30% of the last pay.

(DoP&PW45/51/97-P&PW dated 19th April 2002)

(iv) If an employee died in harness, his family shall be paid family pension at enhanced rate of 50% of last pay, for first 10 years. There shall be no requirement of minimum service, as the requirement of seven years service has been dispensed with. This amended Rule has been effective from 1st October, 2019. Families of employees who died before completing service of 7 years within 10 years before 1st October, 2019 will also be eligible for family pension at enhanced rate.

(DoP&PW O.M dated 19th September, 2019)

- (v) On death of pensioner/ family pensioner enhanced rate of family pension i.e. 50% will be paid for a period of 7 years from the day following the date of death or up to the date on which pensioner would have attained the age of 67 years, whichever is earlier. After that family pension will be paid at the rate of 30% of the last pay.

(sub rule 3(ii) of Rule 54)

11. NON ADMISSIBILITY OF FAMILY PENSION

If a person is convicted for the murder or abetting in the murder of the Government servant, such a person shall be debarred from receiving the family pension. The family pension shall be payable to next eligible member of the family, from the date of death of the Government servants.

(sub rule 11(c) of Rule 54)

12. FAMILY PENSION IN CASE OF MISSING EMPLOYEE / PENSIONER /FAMILY PENSIONER

(i) In the case of a missing employee / pensioner / family pensioner, the family can apply for the grant of family pension & gratuity to the Head of Office of the organization where the employee / pensioner had last served, six months after lodging of Police report.

(DoP&PW O.M. No 1/17/2011-P&PW dared 24/25 June 2013)

(ii) Section 154 (1) of the Criminal Procedure Code mandates filing of an FIR by the Police authorities on a report received of the commission of a cognizable offence. A missing person per se does not point to commission of a cognizable offence, therefore filing of FIR should not be insisted upon.

(iii) Cognizance of a person's disappearance can be taken by the Head of Office on the basis of an authenticated Daily Diary (DD) / General Diary Entry (GDE), filed by the Police authorities concerned, as per the practice prevalent in that State / UT.

(DoP&PW O.M. No 1/17/2011-P&PW dared 24/25 June 2013)

(iv) Section 108 of the Indian Evidence Act provides that when the question will arise whether a man is alive or dead and if it is proved that he has not been heard for 7 years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.

13. SANCTION OF FAMILY PENSION IN RESPECT OF DECEASED PENSIONER

- (i) If spouse name is indicated in the PPO, pension disbursing authority will start the family pension after receiving death information of pensioner in writing.

(sub rule 81(2) of Rule 54)

- (ii) Family pension become payable to widow/widower from the day following the date of death of pension.

(sub rule 81(2) of Rule 54)

14. LANDMARK JUDGEMENTS ON FAMILY PENSION

- (i) The very denial of right to family pension in fact amounting to a violation of the guarantee assured to the appellant under Article 21 of the Constitution. It is an obligation of the authority to compute the family pension and offer the same to the widow of its employee as soon as it became due to her, which is the date of the death of her husband not from the date application.

(Supreme Court of India S.K.Mastan Bee Vs. The General Manager on 4 December,2002)

- (ii) The employee has no control over the family pension as he is not required to make any contribution to it. The family pension Scheme is in the nature of welfare scheme framed to provide relief to the widow and minor children of the deceased employee.

(Supreme Court of India Violet Issac & Ors Vs. Union Of India, 8 February, 1991)

- (iii) On the death of the only earning member, the widow or the minor children were not only rendered orphans but faced more often destitution and starvation. The widow was hardly in a position to obtain gainful employment. Therefore as a measure of socio economic justice, Family Pension came to be conceptualised in the year 1950.

It was liberalised from time to time. The liberalisation was however subject to the condition that the Government Servant had in his life time agreed that he shall make a contribution of an amount equal to two months' emoluments or Rs. 5,000 whichever is less out of the death-cum-retirement gratuity. Those Government servants who did not accept this condition were denied the benefit of family pension scheme.

Focussing on the liberalisation that was introduced in 1964, it transpires that the widow and the minor children of those

Government servants who died prior to 1964 were not eligible for the benefit of liberalised scheme. The other class which was left out of the liberalisation scheme was those Government servants who specifically opted out of the family pension scheme, 1964. The resultant situation was that since January 1, 1964 there were in force two parallel schemes in operation namely a) a pre-liberalisation scheme which continued to be in force those who retired prior to 1.1.1964 or those who did not contribute out of the death-cum-retirement gratuity, roughly styled as non-contributory scheme. The other was the contributory scheme. Both these schemes are incorporated in Rule 54 and 55 respectively of the Civil Services Pension Rules 1972.

The Union of India in its onward march for ushering in socio economic justice further took a step on September 22, 1977 by which the pre-condition of two months' emolument out of death-cum-retirement gratuity was done away with. The memorandum introducing the 1977 liberalisation recorded the decision of the Union of India as under:

"The staff side has suggested in the National Council that this family pension is a social security measure and the employee should not be called upon to contribute towards the scheme. The matter has been examined in the light of the recommendations of the National Council and the President is pleased to decide that no deduction should be made from the death- cum-retirement gratuity as a contribution towards the family pension."

Accordingly since September 22, 1977 the contributory scheme ceased to exist.

(Supreme Court of India Smt. Poonamal Vs. Union of India & Ors., 1985)

- (iv) The payment of pension does not depend upon the discretion of the Government but is governed by the relevant Rules and anyone

entitled to the pension under the Rules can claim it as a matter of right."

(In Deoki Nandan Prasad Vs. State of Bihar & Ors., 1971 Suppl. SCR 634)

- (v) Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition.

(In Jodh Singh Vs. Union of India & Anr Supreme Court of India)

- (vi) There cannot be any doubt that Government cannot amend or substitute statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules by issuing instructions not inconsistent with the rules.

(Supreme Court of India: Union of India & Ors Vs. Rakesh Kumar on 30 March, 2001)

15. PROCEDURE AND TIMEFRAME FOR SETTLEMENT OF FAMILY PENSION

- (i) The Head of Office shall address the eligible member of the family or the guardian, as the case may be, in Form 13 for making claim in Form 14.

(sub rule 77(3) of CCS Pension Rules)

- (ii) Head of Office has to ensure that action to obtain the claim or claims from the beneficiaries, completion of Form 18 and assessment of Government dues is initiated simultaneously. Special efforts have to be made to get the claims forms from the family of the deceased Government servant as early as possible.
- (iii) Where the family is residing in the place of duty of Head of Office, the Forms and documents which are required to be completed by the family may, if possible, be obtained personally and for this purpose the services of the Welfare Officer could be utilized.
- (iv) The process of determination of qualifying service and qualifying emoluments shall be completed within one month of the receipt of intimation regarding the date of death of the Government servant .If there are any periods of unverified service, the Head of Office shall accept the unverified portion of service as verified on the basis of the available entries in the Service Book.

(sub rule 78 of CCS Pension Rules)

- (v) The determination of the amount of family pension shall be done within one month of the receipt of intimation of the date of death of the Government servant.

(sub rule 78 of CCS Pension Rules)

- (vi) To avoid delay in payment of family pension, Head of office should initiate action on intimation of death of government servant, without waiting for production of formal death certificate.

(DoP&PW O.M. No 38/116/93-P&PW dated 2nd May 1994)

- (vii) The Head of Office shall complete Form 18 and send the said Form in original to the Accounts Officer with a covering letter in Form 19 along with the Government servant's Service Book duly completed up-to-date and any other documents relied upon for the verification of the service claimed. This shall be done not later than one month of the receipt of claim by the Head of Office.

(sub rule 80 of CCS Pension Rules)

- (viii) After the documents referred to in Rule 80 have been sent to the Accounts Officer concerned, the Head of Office shall draw provisional family pension not exceeding the maximum family pension and hundred per cent of the gratuity as determined in accordance with the provisions.

(sub rule 80A of CCS Pension Rules)

- (ix) HOO shall issue a sanction letter in favour of claimant or claimants endorsing a copy thereof to the Accounts Officer concerned indicating the amount of provisional family pension and hundred per cent of the gratuity as determined.

(sub rule 80A of CCS Pension Rules)

- (x) On receipt of the documents referred to in sub-rule (1) of Rule 80, the Accounts Officer shall, within a period of three months from the date of receipt of the documents, apply the requisite checks and complete Section I & II of Form 18 and assess the amount of family pension and gratuity.

(sub rule 80B of CCS Pension Rules)

- (xi) If on the date of death, the Government servant was allottee of Government accommodation, the Head of Office on receipt of intimation regarding the death of the Government servant shall within seven days of the receipt of such intimation, write to the Directorate of Estates for the issue of 'No demand certificate' so that authorization of family Pension and Death Gratuity are not delayed.

(sub rule 80B of CCS Pension Rules)

CASE STUDY (1)

At the time of appointment Shri S. Sundar had suppressed the fact he was married to Smt. Meera and had a daughter Sneha. He had subsequently divorced Smt. Meera in the year 1985 in the presence of Local Panchayat Committee Members as per the custom of his community. Subsequent to the divorce he married one, Smt. Reena in the year 1985 itself. He had two sons, namely (1) Shri S. Karan and (2) Shri S. Kumar, from his second marriage.

Earlier the deceased official had made his mother and brother as nominees. This nomination was subsequently superseded by another nomination dated 23.02.1996, which was favour of Smt. Reena the second wife. The nomination for DCRG is also in favour of Smt. Reena. In family particulars also, the official had furnished the names of Smt. Reena as wife and Shri Karan and Shri Kumar as sons.

After death of Shri S. Sundar along with pension papers, Smt. Reena submitted a representation dated 22.03.2008, wherein she had stated about late Shri S. Sundar's first marriage and subsequent divorce. Smt. Reena had pleaded that she only was eligible for grant of family pension and other pensionary benefits in respect of the deceased official, late Shri S. Sundar. Subsequently first wife and her daughter also staked claim for family pension and other pensionary benefits. In June 2010, a compromise was arrived between Ms.Meera and daughter Sneha (married daughter of deceased official) Smt. Reena and Shri S. Karan. They agreed that Smt. S. Reena will claim the pensionary benefits. However, administrative authority decided that mutual agreement is not as per extant rules and family pension claim would be acted upon only if suitable orders passed by a competent court of law for their succession to late Shri S. Sundar.

Subsequent to this, Reena and Shri S. Karan filed application before Principle Subordinate Judge of Madurai for issue of Succession Certificate. As per the Succession certificate issued by the Civil Court both Ms. S. Reena and Ms. Meera were to share the family pension equally i.e. 50% share to each of the family pension. Ms. S. Reena, Shri S. Karan, Ms. Meera and

Ms.Sneha were entitled to receive all other benefits due to late Shri S. Sundar equally, i.e., 1/4th each

ANALYSIS

- (i) The divorce from 1st wife was as per custom of their community before the Panchayat and not through competent court, thus it is not valid.
- (ii) The marriage between Smt. Reena and the deceased official is not valid as per Service Rules and Family Law for the reasons that the first wife was alive at the time at the time of second marriage.
- (iii) The mutual agreement dated 02.06.2010 between the parties was not valid in terms of extant rules. The CCS (Pension) Rules do not provide for any nomination/compromise with regard to family pension, instead it designates the persons who are entitled to receive family pension. Thus, no other person except those designated under the rules is entitled to receive family pension.
- (iv) Succession Certificate under the Indian Succession Act, 1925 can be granted only in respect of 'debts' or 'securities' to which the deceased was entitled. Family pension is neither a debt nor a security of the deceased employee or pensioner of which succession certificate can be applied for under Section 372 of the Succession Act, 1925.
- (v) In this case as per DOPPW's O.M.No.1/16/96-P&PW(E)(vol.II), dated 27th November, 2012, family pension will be shared equally by legally wedded wife and child borne from second wedlock .Smt. Reena will not get any share in family pension for the reason that second marriage is null and void. However, as per provision of Rule 54(7)(b), if the child from second wedlock become ineligible to receive share of family pension, the share will not get lapsed but would be payable to legally wedded wife in full i.e. 100%.

CASE STUDY (2)

Late (Retd.) Col Anil Nayak, retired from Army on 31.05.2016 and joined as Deputy Secretary on re-employment basis on 27.02.2017 and was enrolled to the NPS. He expired on 17.08.2018 while in service. The wife of the ex-officer is entitled for grant of enhanced family pension from Army @ 50% of last pay amounting to Rs.98, 150/- as per Army PPO. She was also entitled to receive family pension from civil side @ 30% of the last basic pay of the ex-officer, amounting to Rs.57, 450/- per month.

The total of the two family pensions was Rs. 1, 55,600/-, which exceeds the maximum limit of family of Rs. 1, 25,000/- as stipulated in 4.4. Of the DoP&PW OM dated 04.08.2016. As stipulated in vide DoP&PW OM dated 30.11.2011, the sum of amounts of family pensions admissible to a family pensioner shall be regulated as per Rule 54(11) of CCS (Pension) Rules 1972.

It was not clear if this ceiling on the total quantum of family pension is applicable in case of spouse of a Govt. Servant who is in receipt of two such pensions i.e. from Military and Civil side.

ANALYSIS

- (i) Vide DoP&PW's OM No. 38/41/106/P&PW(A) dated 05.05.2009 , in case of death in service of a Government servant who was appointed on or after 01.01.2004, family pension (including enhanced family pension) shall be computed in terms of Rule-54 of CCS (Pension) Rules 1972.
- (ii) As per the OM No.28/7/99-P&PW (B)(Vol.II) date the 11th April, 2001 Government employees, who got re-employment in civil service after rendering military service, are governed by Rule 19 of CCS (Pension), Rules, 1972. Rule 19 has no provision for limitation. However, in the case of military pensioners re-employed in civil service, Rule 18(3) of CCS (Pension) Rules, 1972 was made applicable vide DP&AR's OM No.38/5/81-PU dated 5-3-1982.

- (iii) However, matter was re-considered in consultation with Ministry of Finance and it was decided that Rule 18 and 19 shall apply respectively to the civil and military re-employed pensioners. In other words, in the case of re-employment of a military pensioner in civil service, the pensionary benefits for second spell of service shall not be subject to any limitation as per provisions of Rule 18(3) of CCS (Pension) Rules, 1972. Since there is no limitation for Pension, who got re-employment in civil service after rendering military service, as per Rule 19 of CCS (Pension), Rules, 1972, thus there is no limitation for Family Pension in such cases.

CASE STUDY (3)

Shri Siaram was retired from service on superannuation w.e.f. 30.04.2004. As per service record he nominated Smt. Vimala his wife for payment of retirement benefits and based on this the family pension in the PPO was authorized in favour of Smt. Vimala. Shri Siaram expired on 05.11.2008. After his death Smt. Mnataa claimed for family pension as his legally wedded wife. On scrutiny of service record it is revealed that the Govt. Servant had solemnised two marriage, one with Smt. Mnataa and other Smt.Vimala. As per service record Smt. Mnata was the first wife. Thus the department stopped the payment of family pension to Smt. Vimala vide order dated 03.06.2009.

Meanwhile Smt. Vimala filed the petition in the Hon'ble Court of Civil Judge, for grant of Succession certificate. Smt. Vimala submitted that her marriage with deceased Siaram took place on 09.05.1981 and she had given birth to a daughter. She also stated that Smt. Mnata's marriage with Shri Siaram took place in the year 1973. After few months she had left the matrimonial house of Siaram and was residing separately. In the year 1975 Shri Siaram had divorced Smt. Mnata as per caste customs and rites. Thereafter, Smt. Vimala's marriage took place with Shri Siaram at the Sub-Register office under the Marriage Registration.

Smt. Mnata admitted that she is the first wife of Late Siaram and their marriage took place in the year 1973. However, she denied that there was any divorce between her and Siaram by mutual consent as per caste custom.

Hon'ble Civil Judge was of the opinion that as per provisions of Hindu Law, divorce as per caste custom is not a valid divorce. Merely because first wife was legally wedded wife that by itself did not entitle her to succession certificate in comparison to second wife who all through had stayed as wife of deceased and had borne his children. Therefore, considering the 'balance of equity' succession certificate was issued in favour of both and each will get half share of family pension.

Based on the succession the department had processed the family pension claim in favour of both the wives and forwarded to PCDA(P) Allahabad

for sanction of family pension. But the PCDA(P) Allahabad returned the family pension claim with observation that Smt. Vimala being second wife, is not legally wedded wife and not entitled for family pension.

The department sought legal opinion from Advocate who opined that the second marriage performed with the applicant Smt. Vimala during subsistence of first marriage with Smt. Mnata is void and therefore, Smt. Mnata being only legal heirs of Siaram is entitled for family pension. In view of the legal opinion the Department filed Misc. Civil application number against the succession certificate before the Hon'ble Court of District Judge. The same was rejected by the Hon'ble Court with a view that the management had failed to establish with sufficient cause for condoning the delay.

Again WP was filed before the Hon'ble High Court after much delay. The Hon'ble High Court heard the matter and observed that time taken to obtain the permission of the superior officers to prefer the second appeal was delay by 661 days. However, on the apprehension expressed by the CGSC that the judgment is contrary to law and service rules and would set a bad precedent, the Hon'ble High Court held that given in the peculiar facts of the case and the fact that Court is not inclined to condone the delay in preferring the second appeal would not be construed as approving the view taken by the trail Court.

ANALYSIS

- (i) The employee has no control over the family pension as he is not required to make any contribution to it Eligibility for family pension is decided in accordance with the statutory rules, *ibid*, and not on the basis of a succession certificate, as it is not a property of the deceased employee/pensioner.
- (ii) The divorce from 1st wife was as per custom of was not valid.
- (iii) The marriage with Smt. Vimla was not valid as per Service Rules and Family Law for the reasons that the first wife was alive at the time at the time of second marriage.

- (iv) Entitlement for family pension cannot be decided on the basis of any nomination either.
- (v) As per section 11 of Hindu Marriage Act any marriage shall be null and void if the party has a spouse living at the time of the marriage. However by virtue of Section 16 of the Hindu Marriage Act any child of such marriage shall be legitimate.
- (vi) In this case, If the pension disbursing authority had taken timely decision based on the Rules, family pension would have been shared by Smt. Mnata along with child from second wedlock Smt.Vimala in equal.
- (vii) If children from Smt.Vimla become ineligible to receive pension, such share of the family pension would not get lapsed but would be payable to Smt. Mnata in full i.e. 100%.

CASE STUDY (4)

Shri Madan Singh joined service on 7.7.1982 and expired on 26.02.2013. As per service documents, Smt. Genda Devi was his wife. However, Smt. Rekha Devi sent an application dated 19.03.2013 claiming that she was the first wife of late Madan Singh and all pensionary benefits should be given to her. But nothing was mentioned in service document about her. Smt. Rekha Devi was asked to produce succession certificate in support of her claim. In response Smt. Rekha Devi sent an application dated 05.05.2013 with succession certificate dated 04.05.2013 issued by district judge. As per succession certificate both party were authorised to share family pension

ANALYSIS

- (i) As per CCS (Conduct) Rule, remarriage in the case of persons governed by the Hindu Marriage Act is possible under the said Act only after the person concerned has obtained divorce from the present wife from a Court of Law.
- (ii) The woman with whom the second marriage is solemnised does not acquire the status of a wife if divorce is not obtained from the first wife.
- (iii) Succession certificate should not be insisted upon for deciding eligibility of family pension as it is not the property of deceased.
- (iv) Where a certain benefit is admissible on account of status and a status that is acquired on the happening of certain event, namely, on becoming a widow on the death of the husband, such pension by no stretch of imagination could ever form part of the estate of the deceased. If it did not form part of the estate of the deceased it could never be the subject matter of testamentary disposition.
- (v) As per Department of Pension and Pensioners' Welfare's O.M. No. 1/16/1996-P&PW(E)(Vol.II) dated 27th November, 2012, the share of children from 2nd wedlock shall be payable to them in the manner given under sub-rule 7(c) of Rule 54 of CCS (Pension) Rules, 1972, along with the legally wedded wife.

CASE STUDY (5)

Shri Tejram expired on 06.03.2009. His Daughter, Ms. Vinod Bai, applied for grant of family pension in her favour before Superintendent of police, Ajmer on 21.11.2016. The matter was examined and Ms. Vinod Bai was requested to furnish the application for grant of family pension in prescribed Form-14 along with requisite documents for further processing of her case. However, Ms. Vinod Bai has informed that she has got married on 11.12.2017. Ms. Vinod Bai is now claiming for grant of family pension w.e.f. 07.03.2009 i.e. the day after expiry of Late Shri Teja Ram to 10.12.2017 i.e. the day immediately prior to her marriage.

ANALYSIS

- (i) As per the provision of Rule 81(2) of CCS Pension Rules, the family pension become payable from the day following the date of death of pensioner.
- (ii) Unmarried or widowed or divorced daughter is eligible for family pension, until she gets married or remarried or until she starts earning her livelihood, whichever is earlier.
- (iii) It is the responsibility of HOO to obtain claim from eligible family pensioners. Head of Office has to ensure that action to obtain the claim or claims from the beneficiaries, completion of Form 18 and assessment of Government dues is initiated simultaneously. Special efforts have to be made to get the claims forms from the family of the deceased Government servant as early as possible.
- (iv) In the present case, Ms. Vinod Bai was eligible for Family Pension from the day following date of death of her father Late Shri Teja Ram, subject to fulfilment of other conditions laid down in the Rule. However, she became ineligible on the day she got married. Further Ms. Vinod Bai is eligible to receive arrears of Family pension for the period 07.03.2009 to 10.12.2017 which was due to her, however, the same was not paid to her in time.

CASE STUDY (6)

Shri Radhey was earlier married to Pushpa and had 4 children, 3 sons and 1 daughter from the wedlock. It is claimed that Ms. Pushpa had died and Shri Radhey married Ms. Beenu on 10.04.1982 and this marriage was got registered in the O/o Marriage Officer on 13.04.1982. However, no issue was born out of the wedlock i.e. from the 2nd marriage. There was some matrimonial disputes, which led 2ndwife to file petition under Section 9 of Hindu Marriage Act for restitution of conjugal rights and under Section 125 Cr. PC for maintenance against Shri Radhey, which was granted in her favour along with a monthly maintenance of Rs.375/- per month, besides separate residence was granted. The plaintiff also claimed higher maintenance under Section 25 of Hindu Marriage Act., 1995, which was disposed of in favour of the plaintiff.

Shri Radhey expired in May, 2012. As per the records of service the name of 2nd wife, Ms. Beenu is not found in the official record. There is also no record of death of Ms. Pushpa the first wife of Late Shri Radhey. The name of Ms. Beenu is not mentioned in the proforma submitted by Late Shri Radhey at the time of retirement. As per service record of Late Shri Radhey, Ms. Pushpa was nominee for service benefits.

The Hon'ble Family court, vide its judgment dated 13.12.2018, decided the issue in favour of Ms.Beenu as legally wedded wife of Late ShriRadhey

ANALYSIS

- (i) In this case the status of Beena need to be ascertained i.e. whether she was divorced or judicially separated or still holding the status of legally wedded wife.
- (ii) In case of she is legally wedded wife, she will share the family pension along with children of Pushpalata.
- (iii) If she is judicially separated spouse her claim to get family pension will be considered only when children become ineligible to receive family pension.
- (iv) In case of divorce, she will not be eligible for family pension.

CASE STUDY (7)

After the death of Ismail, two applicants namely, Bibi Begum and Shahnaj applied to office for grant of family pension being the wives of Ismail. After going through the record, Pension Sanctioning Authority decided to divide the family pension between Bibi Begum and Shanaj. After 3 years, Shahnaj requested that Bibi begum, the other Wife of Ismail had passed away on 14.09.2016, hence she may be sanctioned full family pension.

ANALYSIS

- (i) No Government servant having a spouse living, shall enter into, or contract, a marriage with any person, Provided that the Central Government may permit a Government servant to enter into, or contract, any such marriage.

(Rule 21 of CCS Conduct Rules)

- (ii) if a government servant/pensioner leaves behind more than one widow, the family pension shall be paid to the widow in equal shares provided that the personal Law of such government servant/pensioners allows the same and the 2nd marriage has been performed after obtaining due permission from the Government as per CCS (Conduct) Rule 21.

(Rule 54 (7) (a) of CCS (Pension) Rules, 1972)

- (iii) On the death of a widow, her share of the family pension shall become payable to her eligible child.

(Sub rule 7 (a) of Rule 54 of the CCS (Pension) Rules, 1972)

- (iv) On the death of widow who is not survived by any eligible child, share of the family pension would not lapse but would be payable to other widow or her children in full i.e. 100%.

(Sub rule 7(b) &7(c) of Rule 54 of the CCS (Pension) Rules, 1972)

CASE STUDY (8)

Shri Jitendra was expired on 24.03.1972 while in service. His wife, Smt. Rani was sanctioned family pension w.e.f. 25.03.1972 which was drawn by her upto February, 1975.

Smt. Rani remarried in February, 1975 and her family pension was stopped. The plaintiff Smt. Anjali Devi claims that she was a minor at the time of remarriage of her mother Smt. Raj Rani and the Department did not sanction her family pension, which she was entitled to. She further claimed that she was entitled to family pension, being minor daughter of Late Shri Jitendra till she attained the age of 24 years or till she got married, whichever is earlier, as per rules of the Government. She intimated that she got married on 12.12.1994 and, therefore, she is entitled to family pension with effect from 01.03.1975 to 11.12.1994. However, the same was not sanctioned family pension which she was entitled for.

She filed a Civil Suit before the Hon'ble Court of Additional Civil Judge. It was argued by the Counsel of the Defendants that the suit of the plaintiff is hopelessly time barred as she had attained majority in the year 1990 and the limitation to file the suit for declaration is three years.

This argument of the Counsel of the Defendants was not accepted by the Hon'ble Court of Addl. Civil Judge held that relief of pension claimed by an employee is counting cause of action and even if the claim is not made immediately or within reasonable time, it cannot be defeated by mere lapse of time. The Hon'ble Court in the judgment dated 28.02.2019 stated that plaintiff is entitled to arrears of family pension to be fixed by the defendants at the prevailing rates at the relevant period of time i.e. from 01.03.1975 till 11.12.1994 pension sanctioning authority was of the view that the case of Smt. Anju Devi was hopelessly time barred and the fact that the Department cannot suo-moto authorize family pension to a minor, unless it is approached by the applicant/legal guardians. In this case Smt. Rani, who was in receipt of family pension that was stopped on her remarriage were supposed to approach the Department for family pension in favour of the minor daughter of Late Jitendra and Smt Rani.

ANALYSIS

- (i) It is the responsibility of the Head of Office to make special efforts for obtaining claim form. He shall address the eligible member of the family or the guardian, as the case may be, in Form 13 for making claim in Form 14.
- (ii) The family pension is payable to the unmarried daughters until she gets married or until she starts earning her livelihood, whichever is earlier.
- (iii) Anju Devi is entitled to arrears of family pension from 01.03.1975 till 11.12.1994

CASE STUDY (9)

Shri Bhola was being granted family pension in respect of his wife Late Smt. Ramrati. He was convicted on charge of 376 IPC for raping his daughter and was sentenced to rigorous imprisonment for 10 years and fine of Rs.10,000/- under section 376 IPC on completion of sentence, he submitted representation for release of Family Pension and arrears of family pension for the period Nov. 2005 to June, 2015 enclosing the custody certificate issued by Tihar Jail and life certificate.

ANALYSIS

Under 8 of Rule of CCS (Pension) Rules, 1972, pension is subject to future good conduct of pensioner.

CASE STUDY (10)

Shri Swapnil expired on 23.11.2008. As per office record Smt. Visthi was his wife and nominated for terminal benefits including gratuity/ GPF/ CGEGIS/ Leave Encashment etc. A Court order, was received by Ministry of Defence on 28.01.2009, directing to hold back his retirement benefits since, mother, wife and daughter of deceased had filed case in Court for getting succession certificate. Hon'ble Court vide its order dated 15.09.2009 directed that family pension may be granted to Smt. Visthi, legally wedded wife of late Shri Swapnil.

ANALYSIS

- (i) Family pension is granted to the legally wedded spouse in accordance with sub-rule (6) (i) of rule 54 of CCS (Pension) Rules, 1972 up to the date of death or re-marriage, whichever is earlier.
- (ii) However the share of children from second wedlock has also been protected and they are allowed to share family pension along with legally wedded wife.

