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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TA 1472 of 2010

WEDNESDAY 18TH DAY OF MAY 2011

“Hon’ble Mr. Justice Janardan Sahai, Member (J)
Hon’ble Lt. Gen. P R Gangadharan, Member (A)”

Smt. Sukhberi, W/o (Late) Shri Jayapal
Singh, R/o Vill. & PO. Sarurpur Kalan, Dist.
Baghat-250619.

.....Applicant

By Legal Practitioner Col R A Pandey, Advocate.

Versus

1. Union of India through the Secretary,
Ministry of Defence, DHQ PO, New
Delhi.
2. The Chief of Army Staff (COAS),
Army Headquarters, DHQ PO, New
Delhi-11
3. Officer-in-Charge Records the Mahar
Regt, PIN-900127, Saugor (M.P.)-
470001.
4. Commanding Officer 4 MAHAR
(Borders), PIN-911504, C/o 56 APO.
5. Principal Controller of Defence
Accounts (Pensions) [PCDA (P)],
Allahabad

.....Respondents

By Legal Practitioner Shri Alok Mathur, Ld. Sr. Standing Counsel.

ORDER

“Hon’ble Mr. Justice Janardan Sahai”

1. Sepoy Birender Singh son of the applicant was enrolled in 4 Mahar Regiment on 10.11.1980. It is stated that he was killed in action during IPKF operations in Sri Lanka on 14.12.1987. Sepoy Birender Singh left behind him a widow Smt. Rajeshi and two daughters, Km. Savita and Km. Anshu. The widow, Smt. Rajeshi was granted Special Family Pension which she continued to get till her death on 06.07.2004.

2. In the counter affidavit reference has been made to an application of Smt. Rajeshi informing the Army Authorities that both her daughters had been married off in the year 2003. It appears that the widow wanted to adopt a son and there was some correspondence between ^{her} Smt. Rajeshi and the Army Authorities. It also appears that the Army Authorities ^{were} was of the view that in absence of a formal deed of adoption the adoption could not be accepted and information to this effect was sent to Smt. Rajeshi by a letter dated 30.09.2003. After the death of Smt. Rajeshi on 06.07.2004, the special family pension was discontinued.

3. The applicant, Smt. Sukhberi is the mother of the deceased. She has been granted liberalized family pension w.e.f. 07.10.2008 as the second awardee. The dispute in the present case relates to the payment of liberalized family pension from the date of the death of the widow i.e. from 07.07.2004 to 06.10.2008. The representation filed by the applicant for payment of liberalized family pension for this ^{period} was rejected by an order dated 29.01.2009 of the Records Mahar Regiment, Annexure - 12 to the petition.

4. In the counter affidavit the respondents have relied upon Regulation 230 of the Pension Regulations for the Army 1961 and also upon the letter of the Govt. of

India, Ministry of Defence dated 26.07.1975, Annexure 7 to the Counter Affidavit. The fate of this case depends upon the interpretation of Regulation 230 and of the letter of the Govt. of India dated 26.07.1975 Regulation 230 of the Pension Regulations for the Army 1961 reads as follows :

"230. After the expiry of 1st life award of special family pension to all eligible members for it second life award of special family pension may be granted to the parents and in their absence to the brothers and in the absence of parents/brothers, to sisters provided they were largely dependent on the deceased for support and are in pecuniary need.

(2) Second life award shall be admissible only to one eligible member and on his/her death/disqualification it shall not be transferred to any other heir.

(3) When both the parents are alive, second life award will be payable to the father if he is otherwise eligible it shall be payable to the mother only when father is not alive.

(4) in the case of brother/sisters second life award will be payable to the highest eligible brother/sister.

(5) The second life award shall be granted from the date of application of the claimant".

5. Sub Rule 5 of Regulation 230 upon which the respondents rely provides that the second life award shall be granted from the date of application of the claimant. In the letter dated 26.07.1975 also, clause 'f' upon which the

second life award from the date of the application. According to the respondents, the applicant's claim for grant of the pension was submitted on 07.10.2008 and therefore in terms of aforesaid provisions the liberalized family pension would be payable from that date.

6. We have considered the provisions of Regulation 230 as also the provisions of Govt. of India letter dated 26.07.1975 both of which trace their authority to the Govt. ^{of India} The letter dated 26.07.1975 however being the later provision and applicable to Liberalized Pensionary Awards would override the provisions of Regulation 230. It appears that the reason for Second Life Award being granted from the date of the application is to be found in sub Regulation (1) of Regulation 230. The consideration for the grant of Second Life Awards ^{to} the parents of the deceased was based on their being dependent upon the deceased for support and also on their ^{being} in pecuniary need. Both the considerations were dependant upon existence of certain facts on the determination of which the second life award could be granted. The determination of means of the second life award was known as the means test. The provision in sub rule 5 that the second life award would be payable from the date of application was therefore reasonable. The Govt. of India vide letter dated 26.07.1975, however has removed the means test condition. The abolition is clear from clause 'e' of the Govt. of India letter dated 26.07.1975. The said letter reads as under :-

"I am directed to refer to this Ministry's letter No. 200847/Pen-C/71 dated 24 Feb 1972 on the above subject, and to convey the sanction of the President to regulate the cases of second life award in respect of

casualties suffered by JCOs and Ors relating to the operations mentioned therein, as under:-

- (a) If the first recipient of the family pensionary award dies or is disqualified earlier than 7 years (counting from the date of casualty), the award will be continued at the same rate to the parents if still alive, for the balance of 7 years without any reduction.*
- (b) After the initial period of seven years, the award to be continued will be at a consolidated rate of Rs. 125/- p.m. in the case of JCOs and Rs. 90/- pm in the case of Ors, subject to the provisions of sub para (d) below;*
- (c) If the first life award was in favour of the widow and she remarries with a person other than the real brother of her deceased husband, she would get an amount equal to ordinary family pension and the second life award will be sanctioned to a parent if still alive, at the rates mentioned in sub paras (a) and (b) above, depending upon whether the claim had arisen within 7 years or after 7 years of the casualty, subject to the provisions of sub para (d).*
- (d) Where the first life award was given to a parent and the widow remarried with a person other than the real brother of her deceased husband, she would get an amount equal to the ordinary family pension and the balance would be left with the original recipient benefit of the rest of the family, subject to the condition that in no case the award so continued to the latter will be less than Rs. 125/- in the case of JCOs and Rs. 90/- in the case of Ors. However, if the first life*

award is less than these respective rates the amount so continued will be at the same rate as for the first life award.

(e) With the abolition of the means test the condition regarding reckoning the income of the parents from other permanent sources and the contribution of the living sons, whether willing or unwilling to support and the ability to contribute stipulated in Reg. 230 (a). Pension Regulations for the Army Pt 1 (1951) (and corresponding Regulations for the Navy and Air Force) will also be abolished in these cases of battle casualties."

(f) When the original recipient dies or becomes disqualified the restriction contained in Regulations 230 (e) Pension Regulations for the Army Pt. 1 (1961) (and corresponding Regulation of family pension from the date of application by the second life awardee will be applicable.

(g) Children Allowance, if otherwise admissible, will be payable only as per para C91) of Annexure I of this Ministry's letter Number 200847/Pen-C/71 dated 24 Feb 72, in cases falling under sub para (b) above.

This letter will have effect from 1st Feb 72."

6. A perusal of the conditions for grant of liberalized family pension given in this letter indicates that the factors required to be determined by Regulation 235 (1) are no longer relevant and liberalized family pension in case of battle casualties is payable to the parents without any exercise regarding the income of ~~the~~ from permanent sources and the contribution of the living sons

whether willing or unwilling to support. Therefore the rationale for continuance of the condition viz continuance of family pension from the date of the application by the second life award has gone. The continuance of the condition in clause 'f' of the Govt. of India Letter viz that pension is payable from the date of the application would be irrational and arbitrary in battle casualty cases and also subject to attack under Article 14 of the Constitution. It is clear from the list of Kindred Roll and names of heirs, Annexure - 9 to the counter affidavit that the name of the applicant is included therein. On the date of death of the widow, the applicant became eligible as the next nearest heir for grant of liberalized family pension. The intimation of the fact that the daughters have been married had already been given to the respondents by the deceased widow Smt. Rajeshi as is clear from the averments made in the counter affidavit. Thus the applicant being preferential claimant was entitled to the grant of liberalized family pension. No exercise for the purpose of determining her claim was required to be performed. The Clause 'f' of the Govt. of India Letter dated 26.07.1975 would be applicable to such cases where the claimant's name is not included in the list of heirs with the Army Authorities. In such cases an enquiry about the relationship of the claimant with the deceased and of preferential heirs/claimants would have to be made. We, would therefore read down clause 'f' of the Govt. of India letter as applicable only to such a claimant who is not already included in the list of heirs to save the provision. On this construction of the Rule, the applicant would be entitled to liberalized family pension from the date of death of the widow and in our opinion the applicant is therefore entitled to succeed. In the petition the applicant has also prayed for correcting her date of birth as October, 1929 whereas her recorded

date of birth is July, 1940. Col. (Retd) R A Pandey, Counsel for the applicant stated that he is not pressing this relief. In the circumstances, it is not necessary to adjudicate upon this issue. The petition is allowed. The order dated 29.01.2009 to the extent to which it rejects the claim of the applicant for liberalized pension from the date of death of the widow, Smt. Rajeshi upto the date of her application dated 07.10.2008 is set aside. The respondents are directed to pay the applicant the liberalized family pension for this period.

(Lt. Gen. P R Gangadharan)
Member (A)

(Justice Janardan Sahai)
Member (J)

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