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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

T.A. No. 22 of 2009

Thursday this the 13<sup>th</sup> day of January, 2011

"Hon'ble Mr. Justice Janardan Sahai, Member (J)  
Hon'ble Lt. Gen. P. R. Gangadharan, Member (A)"

Sarla Devi, aged about 62 years, wife  
of late Shri Ram Saran Singh,  
Resident of village Abdu (Saroha),  
Post-Bank Gaon, District- Faizabad.

.....Applicant

By Legal Practitioner Shri Pradeep Kumar, Advocate.

Versus

1. Union of India through Secretary,  
Ministry of Defence, New Delhi.
2. Directorate General of E.M.E.  
M.G.O.'s Branch, Army Head  
Quarters, D H Q P O – New Delhi –  
110011.
3. Major, Senior Record Officer for OIC  
Record, Rajput Regiment Abhilekh  
Karyalya, Pin-900427, Distt. –  
Fategarh.
4. Captain, Records Officer for Office in  
Charge Records (Pension Section),  
The Rajput Regiment Fatehagarh  
(U.P.) 209601.
5. Branch Recruiting Officer, Amethi  
District Sultanpur (U.P.) 227401.
6. Zila Sainik Kalyan and Punervas  
Adhikari, Sultanpur, District Sultanpur  
(U.P.)

.....Respondents

By Legal Practitioner Shri K.D. Nag, Ld. Sr. Standing Counsel

## ORDER

"Hon'ble Mr. Justice Janardan Sahai"

1 Sepoy, Ashok Kumar Singh, the son of the applicant Sarla Devi, was in the Indian Army. He died in an accident on 01.06.1990 leaving behind the applicant Sarla Devi, his mother, his father, widow Smt. Heera Devi, but no issue. He also left behind him a brother, B.K. Singh.

2 It appears that the widow Smt. Heera Devi was given pension for some time, <sup>ys</sup> However, she remarried on 16.05.1993 and the family pension was stopped. The applicant applied for grant of family pension, but her claim was rejected by the OIC Records, Rajput Regiment. The applicant has challenged the letter dated 25<sup>th</sup> July, 2006, Annexure – 1 of the OIC Record informing her that by letter dated 8<sup>th</sup> April, 2006, she has already been intimated that continuance of ordinary family pension to parents of a deceased soldier is not admissible under the rules. Ld. Counsel for the applicant submitted that the applicant has not received the letter dated 08.04.2006. The said letter has also not been annexed with the counter affidavit.

3 The applicant's case for grant of family pension is based on a policy letter of the Government of India dated 24.11.1999, Annexure – 7 to the petition, which makes reference to a previous letter of Ministry of Defence dated 26.08.1998 whereunder parents

who were wholly dependent on the deceased Armed Forces Personnel when he/she was alive would also be entitled for family pension with effect from 01.01.1998 subject to fulfillment of the other conditions prescribed in this regard. This letter dated 24.11.1999 clarifies that parents of Armed Forces Personnel who died prior to 01.01.1998 will also be entitled to family pension if they were wholly dependent on the Armed Forces Personnel when he/she was alive and the Armed Forces Personnel has not left behind a widow/widower, eligible son or daughter of a widowed/divorced daughter, who will have a prior claim to family pension in the order indicated. Some other conditions have also been referred to in the letter of 24.11.1999. In the counter affidavit, the respondents have stated in para-4 that the claim of family pension of the applicant was rejected in the year 1996 by the PCDA, Allahabad vide letter dated 12.12.1996, Annexure – A-3 to the counter affidavit on the basis of Army Instructions – 51/80 which according to the respondents provides that the family pension is not admissible to the parents of the deceased or remarried widow of the deceased. A copy of the Army Instructions 51/80 has also been annexed as Annexure – A-1 to the counter affidavit. It appears that the averment in para-4 of the counter affidavit that the Army Instructions – 51/80 provides that the family pension is not admissible to the parents of deceased or remarried widow of the deceased is merely an interpretation given in

the counter affidavit as the Ld. Sr. Standing Counsel Shri K.D. Nag, who appears for the respondents could not refer to any specific provision of the aforesaid Army Instructions to that effect.

4 Para-6 of the Army Instructions, however, has defined family. Para - 7 provides for the list of the persons to whom the pension is admissible. Para - 8 provides for the order, in which the pension is payable and para - 9 provides for payment of pension on the death of widow where an individual is survived by more than one widow. Para - 6, 7, 8 and 9 of the Army Instructions <sup>are JS</sup> ~~is~~ quoted below :

"6. 'Family' for the purpose of these orders will include the following relatives of the individual :-

- (a) Wife, and widower in the case of a lady medical officer of AMC;
- (b) Minor sons; and
- (c) Unmarried minor daughters.

NOTES : (1) (b) and (c) above will include children adopted legally before retirement.

(2) Marriage after retirement will not be recognized for the purposes of these orders.

7. The pension will be admissible -

(a) to a widow (widower in the case of a lady medical officer of AMC) up to the date of death or disqualification whichever is earlier;

(b) to a minor son until he attains the age of 18 years;

(c) to an unmarried daughter until she attains the age of 21 years or marriage whichever is earlier.

NOTE: With effect from 29<sup>th</sup> March 1978, unmarried daughters, sons will continue to get family pension up to the age of 24 years and 21 years respectively.

8. Except provided in para 9(a) below, family pension will not be payable to more than one member of an individual's family at the same time. It will first be admissible to the widow (widower in the case of a lady medical officer of AMC), and thereafter to the eligible minor children. In the event of disqualification or death of the widow (widower in the case of lady medical officer of AMC) the pension will be granted to the minor children through their natural guardian. In disputed cases, however, payment will be made through a legal guardian.

NOTE : If minor sons are alive, unmarried minor daughters will not be eligible for pension. The family pension will be granted to the eldest minor son in the first instance. In his disqualification/death the other minor sons will be eligible for pension according to the seniority by age. The eligibility of unmarried minor daughters for pension will start only where there is no minor son eligible for pension. In their case also the one who is the senior-most in age, has prior claim for pension.

9(a) *Where an individual is survived by more than one widow the pension will be paid to them in equal shares. On the death of a widow her share of the pension will become payable to her eligible minor child. If at the time of her death, a widow leaves no eligible minor child, the payment of her share of the pension will cease.*

(b) *Where an individual is survived by a widow and has also left behind an eligible minor child/children from another wife, the eligible minor child will be paid the share of pension which the mother would have received if she had been alive at the time of the death of the individual."*

5 The submission of the Ld. Sr. Standing Counsel, Shri K.D. Nag is that under para 8 of the Policy of 1999 read with the Army Instructions – 51/80 if an armed force personnel dies leaving behind a widow and parents, the widow would exclude the parents and once excluded the parents of the deceased would not become eligible even in the family pension being paid to the widow has to be stopped on account of her remarriage. The Ld. Counsel for the applicant, however, submitted that the interpretation being given by the Ld. Sr. Standing Counsel to the policy of 1999 as also to the Army Instructions, is erroneous and if that interpretation is taken to be correct, the deprivation of pension to the mother would be violative

of the provisions of Article 14 of the Constitution of India as being arbitrary, unreasonable and discriminatory.

6 We have considered the rival submissions. The Pension Regulations for the Army, 1961 provide for family pension as also for special family pension. Regulation 219 of the Pension Regulations for the Army, hereafter, referred to the pension regulations provides that

*“a relative specified in Regulation 216 shall be eligible for the grant of family pension, provided;-  
.....”*

7 Regulation 216 of the Pension Regulations gives a list of the relatives of the deceased, who shall be eligible for the grant of family pension and they are (a) Widow, lawfully married, (b) Father, (c) Mother, (d) Son, actual and legitimate, (e) daughter actual and legitimate.

8 Regulation 218(a) of the Pension Regulations reads as follows :

*“An individual may nominate any, but only one, of the relatives specified in Regulation 216, as heir to the special family pension.”*

9 It appears that the deceased Sepoy Ashok Kumar Singh had nominated his widow Smt. Heera Devi. It appears from the letter dated 19.07.1990, Annexure – 3 of the petition which is a copy of the

letter of the Commanding Officer to B K Singh the brother of the deceased, that as per the rules in force, all claims accruing on the soldier's death would go to his widow only. The question in this case is whether the applicant would be entitled to the payment of family pension after remarriage of Smt. Heera Devi, widow of deceased soldier. Para 8 of the policy only provides that family pension will not be payable to more than one Member of an individual's family at same time. The effect of para 8 is that where the family pension is being paid to the widow it would not be payable to the other Members of the family at the same time. It does not provide that when the widow remarries or dies the next preferential member of the family would be ineligible. The provision for payment of family pension is a beneficial provision. The parents of the deceased, in case they are dependents are included in the definition of family and therefore eligible for grant of family pension. In view of this fact, it appears that the scheme under the Pension Regulations for the Army, 1961 Military Instructions 50/81 as also under the Policy of 1999, when it provides for grant of pension to certain relatives or members of the family is merely a convenient mode of payment for maintenance of the family. It is expected that when the pension is paid to the widow, she would be maintaining the aged and dependent parents also. On the remarriage of the widow, she becomes ineligible for grant of family pension. However the parents being maintained by



the deceased and thereafter by the widow would still require to be maintained and it could not have been the object of the policy of 1999 to deprive or exclude the parents from the applicability of the beneficial provisions. The interpretation that we are giving to the policy is also supported from the relevant paragraphs of the Policy. Sub para ..... (d) of para - 1 of the policy, for example provides that family pension wherever admissible to parents the mother will receive the pension first and after her death, the father will receive the family pension. Similarly, in the Army Instructions - 51/80 Annexure - CA-1, the note of para-8 provides that if minor sons are alive, unmarried minor daughters will not be eligible for pension. The family pension will be granted to the eldest minor son in the first instance. On his disqualification/death the other minor sons will be eligible for pension according to seniority by age. The eligibility of unmarried minor daughters for pension will start only where there is no minor son eligible for pension. In this case also the one who is the senior most in age, has prior claim for pension. It could not have been the object of this provisions that only the eldest minor son is to be maintained. Rather it appears that it is only as a mode of convenience that pension is to be given in the name of the eldest minor son and it is expected that other family members would be maintained. That being the rational of the policy of 1999 as also the Army Instructions-51/80, it appears to be a proper interpretation that the widow

is to be given the family pension for purposes of maintaining the whole family dependent upon the deceased. The remarriage of the widow would not affect the dependency of the other family members and their requirement to be maintained. The Army Instructions - 51/80 do not refer to family pension being paid to the parents apparently because in the definition of family in para - 6, parents are not included. This position has now been changed by the Policy of 1999 and parents are now included in the definition. The proper interpretation of the policy is that the family pension is first payable to the widow but on her death or remarriage it would be payable to the parents dependant on the deceased if they fulfill other conditions of eligibility. If this interpretation is not given to the policy the deprivation of the dependant parents would be violative of

Article - 14 of the Constitution of India.

10 In Smt. Bhagwanti Vs Union of India (1989) 4 Supreme Court Cases 397, the petitioners were widows who had married government servants after their retirement and also had minor children from such wedlock. Their claim to family pension was rejected by the department concerned on the ground that they were not covered by the expression 'family' within the definition of Rule 54(14)(b) of the CCS (Pension) Rules, 1972, which excludes the spouse who remarried a government servant after the retirement and children born after the retirement. The Apex Court held that the

consideration upon which pension proper is admissible or the benefit of family pension has been extended do not justify the distinction envisaged in the definition of family by keeping the post-retiral spouse out of it. It was held that the limitation incorporated in the definition of 'family' in Rule-54 suffers from the vice of arbitrariness and discrimination and cannot be supported by nexus or reasonable classification. Reliance was placed by the Apex Court upon its previous decision in D.S. Nakara Vs Union of India (1989) 4 SCC (p.323).

11 We are of the opinion that after the inclusion of the parents in the definition of 'family' and their eligibility for grant of family pension, exclusion from payment of family pension only on the ground that the widow who was being paid pension has remarried, would be arbitrary and violative of Article - 14 of the Constitution of India. In the case of other heirs such as children on the death of the widow the pension is not stopped on the death of the widow but a payable to the minor children. We are, therefore, of the view that the family pension cannot be refused to the parents only on the ground that the family pension was first being paid to the widow who has since remarried. The refusal to grant family pension to the applicant on that ground cannot, therefore, be sustained and the letter dated 25.07.2006 is liable to be quashed.

12 Shri K.D. Nag, Ld. Sr. Standing Counsel then submitted that the applicant was not wholly dependent upon the deceased, Ashok Kumar Singh and that she has another son, Sepoy B.K. Singh, who is still in service and that she is liable to be maintained by B.K. Singh and, therefore, the applicant would be ineligible for the grant of family pension. Ld. Sr. Standing Counsel has placed reliance upon Annexure – 3 to the petition, the letter dated 18.07.1990 of the Commanding Officer to Sepoy B.K. Singh. On the other hand, the Ld. Counsel for the applicant drew our attention to Annexure – 8 to the petition which is a certificate of 10.03.1990 of the Officer Commanding, A Company, 3 Rajput Regiment in which the list of dependent members has been given as Ram Saran Singh- Father, Sarla Devi- Mother and Heera Devi- Wife. It does not appear from the Annexure – 1 to the petition that the claim of the applicant has been rejected on the ground that the applicant was not wholly dependent upon the deceased. The claim of the applicant has been resisted in the counter affidavit on the ground that the parents cannot be granted any family pension on the remarriage of the widow of the deceased. The fact whether the applicant was wholly dependant upon the deceased son is a factual aspect<sup>2</sup> which needs to be examined by the departmental authorities as has been provided in the Policy of 1999 itself. We, therefore, allow the petition and quash Annexure – 1 letter dated 25.07.2006 and direct the respondents to consider the

question of payment of family pension afresh in the light of this order. The respondents may take a decision in the matter preferably within a period of four months from the date a certified copy of this order is filed before the OIC Records.

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

(Justice Janardan Sahai)  
Member (J)

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