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AFR

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

TA 624 of 2010

WEDNESDAY 8TH DAY OF FEBRUARY 2012

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

Smt. Anshu Chauhan W/o Late 761639
C.P.L. R K Singh, R/o Village
Alampur, Post office Sihali Jagir Dist :
J P Nagar.

.....Applicant

By Legal Practitioner Shri R K Dubey, Advocate.

Versus

1. Union of India, through Home Secretary Sanshad Bhawan, Delhi.
2. Dy. Controller, Air Force Record Office Family Pension Department, Pin Code 938406, Subroto Park, New Delhi 110010
3. Controller General of Defence Account Pension Department West Block, R.K. Puram,
4. C.C.D.A. (P) Allahabad, District : Allahabad.
5. Air Force Record Office, Pin 938406 Subroto Park, New Delhi-110010

.....Respondents

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

ORDER

“Hon’ble Mr. Justice Janardan Sahai”

1. The applicant is the widow of Late CPL R K Singh who died while in service on 29.03.1999. Consequent to his death ordinary family pension has been paid to the applicant vide letter dated 12.10.2007, Annexure 3 to the petition of the Air Force Record Office. The applicant was informed that as she has re-married she would not be eligible for continuance of the family pension even though it be with the real brother of the deceased. Reliance has been placed on a circular letter of the Govt. of India, Ministry of Defence dated 31st January, 2001 in support of the stand that under this circular widows who are in receipt of liberalized family pension (LFP)/ Special family pension (SFP) and have re-married on or after 1st January, 1996 alone are eligible for continuance of family pension after re-marriage and as the claim relates to ordinary family pension, it is not admissible. The applicant had also prayed for grant of Special Family Pension but that claim was rejected earlier by the CCDA (P), Allahabad (reference of which is contained in the letter dated 16th June, 2000 of the Air Force Record Office) on the ground that the death of the applicant’s husband was neither attributable to nor aggravated by Air Force Service. The applicant filed a Writ petition no. 25532 of 2008 challenging the letter dated 12.10.2007 rejecting her claim for grant of ordinary family pension and also notice dated 20.08.2007 of the State Bank of India informing her

about the recovery of a sum of Rs. 48,839.00 already deducted and claiming a further recovery of Rs. 38,705.00 for payment of family pension erroneously made. The papers of this petition have been transmitted to the Tribunal after its formation. By means of an amendment which has been allowed, the applicant has also challenged the rejection of her claim for Special Family Pension effected by the letter dated 16.06.2000: The stand of the respondents in the counter affidavit is that in the pension payment order of the applicant there was a condition that in case of the applicant's re-marriage even with the brother of the deceased husband she would become ineligible for continuance of family pension. In the counter affidavit, the respondents have placed reliance upon the Air Force Instruction ^S ~~1/S/22~~ ^{of} 1964 in support of their contention that ordinary family pension is admissible to a widow only till the date of her re-marriage or death. A copy of these ^{of} Instructions of Air Force ~~Record~~ ^{Inclusion} have been annexed by the respondents in the supplementary counter affidavit filed before the Tribunal.

2. Pension to the personnel of the Air Force is governed by the Pension Regulations for the Air Force 1961. Regulation 195 of the Pension Regulations ^{of} Air Force reads as under :-

"195. A relative specified in regulation 192 shall be eligible for the grant of family pension, provided:

General

(a) He or she is not in receipt of another pension from Government.

(b) He or she is not employed under Government (But see regulation 198)

Widow

(c) a widow has not re-married.

This condition shall not apply to a widow who re-married her deceased husband's brother and continues to live a communal life with and/or contributes to the support of the other living eligible heirs.

Father

(d) A father is above 50 years of age

If he is below 50 years of age, he shall be eligible for a family pension only if he is incapable of self support by reasons of a physical or a mental infirmity.

Mother

(e) A mother, who is a widow at the time of her son's death or who becomes a widow thereafter, has not remarried.

If she had remarried before her son's death, she shall remain eligible for a family pension, unless and until she again becomes a widow and remarries.

Son

(f) A son is below the age of 18 years. A son above that age shall be eligible for pension only if he is incapable of self support by reason of a physical or a mental infirmity, which arose before he attained the age of 18 years.

Daughter:

(g) A daughter has not married."

3. From a plain reading of this Regulation which deals with the conditions of eligibility and ineligibility for family pension it is clear that although family pension is admissible to a widow who has not re-married but it has been clarified that this condition shall

not apply to a widow who has re-married with her deceased husband's brother.

4. Para 1 of the Air Force Instruction AFI ^{15-25 of 85} ~~A/S~~/64 provides that except in certain categories specified therein the pensionary benefits detailed in para 2 thereof will be admissible to a widow and children of all commissioned officers and Airmen who were in service on 1st January, 1964 or who join services thereafter and who die while in service or after recruitment with a retiring or disability pension on account of causes which are neither attributable to nor aggravated by service. Para 2 of the Instructions provides for the scale at which the family pension is payable. Para 3 defines : 'pay', Para 4 and 5 which are relevant for the purposes of the present case are quoted below :

"4. "Family" for the purposes of these orders will include the following relatives of the individual :

- a. Wife
- 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 purposes of these orders.

5. Pension will be admissible

(a) to any widow up to the date of death of remarriage whichever is earlier.

(b) To a minor sons until he attains the age of 18 years;

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

Note : In cases where there are two or more widows, pension will be payable to the oldest surviving widow. On her death, it will be transferred to the next surviving widow, if any. The term 'eldest' would mean seniority with reference to the date of marriage."

5. We have heard Shri Ram Kumar Dubey holding brief of Shri Anand Shankar Mishra, Counsel for the applicant and Shri K D Nag, Sr. Standing Counsel on behalf of the respondents.

6. The contention of the Ld. Sr. Standing Counsel is that the concept of Ordinary family pension did not exist in the Pension Regulations and was introduced by Air Force Instructions AFI 1/S/64^{§ - 25 of 64} and in view of para 4 thereof, pension is admissible to a widow only upto the date of death or re-marriage whichever is earlier. He also submits that para 5 of these Air Force Instructions supersedes the Pension Regulation 195 (c) by which exception was made in favour of a widow who re-married her deceased husband's brother, as the Air Force Instruction AFI 1/S/64^{§ 25 of 64} does not contain any such exception. According to Mr. Nag, Regulation 195 (c) of the Pension Regulations for Air Force 1961 is applicable to Special Family Pension and not to ordinary family pension. In our opinion this contention of Mr. Nag does not have any merit. Chapter 3 of the Pension Regulations for the Air Force 1961 deals with the grant of pension to airmen. Sub Section 1 of this

chapter relates to general provisions governing the grant of pension.

Sub section II of the chapter bears the heading **Family Pension and Gratuity, Special Family Pension**. Regulation 189 deals with Special Family Pension. Regulation 192 sets out the list of eligible members of the family for grant of Special Family pension and in this list is included a widow lawfully married, father, mother, son, actual and legitimate, daughter, actual and legitimate. Ordinary Family pension has been dealt with in Regulation 195, 196, 197 and 198. No doubt in these regulations the expression used is family pension but it is quite clear from the subject matter that the family pension dealt with in these Regulations is not Special Family Pension. This is also clear from the fact that in Regulation 192, a list of eligible heirs for grant of Special family pension has been given. Regulation 195 provides that the relatives specified in Para 192 shall be eligible for family pension. In case the interpretation of Mr. Nag is accepted Regulation 195 would be rendered redundant because the list of relatives eligible for special family pension is already laid out in Regulation 192. From a reading of various provisions of the Pension Regulations it is clear that distinction has been drawn between special family pension and the ordinary family pension and Regulations have distinguished the two pensions by use of the expression Special Family Pension and Family Pension.

7. We shall now deal with the other contention of Mr. Nag that the Air Force Instructions have superseded para 195 (c). One of

the questions which had arisen in this case was whether the Air Force Instructions can at all supersede the Pension Regulations. We had granted time to the Standing Counsel to obtain instructions and to file material on the point whether the Air Force Instructions have been gazetted but despite time granted, the respondents have not come out with any categorical stand beyond submitting that the Air Force Instructions are non-statutory. However Ld. Sr. Standing Counsel conceded that in case of inconsistency between the pension Regulations for the Air Force and the Air Force Instructions the former will prevail. ⁴ ~~As~~ ^{It} ~~is~~ ^{however as} alleged that the AFI and the Regulations both emanate from the Central Govt. we shall not rest our decision on this concession.

8. We have already extracted para 5 of the Air Force instructions upon which reliance has been placed by the respondents in support of their contention that para 195 (c) has been superseded. The exclusion of a widow remarrying her deceased husband's brother from the disqualification for grant of pension to widows on remarriage has a salutary social object to achieve. It is an incentive which not only promotes remarriage of widows but also provides stability in the upbringing of children of the deceased serviceman whose family might otherwise be torn in endless litigation with the widow; ^{It} the children becoming hapless victims in custody and property disputes. Unless therefore the supersession is clear we would be slow in giving paragraph 5 of the AFI an interpretation

which militates against the exclusion of this class of remarried widows from the disqualification. Para 195 of the Pension Regulations finds place under the heading "condition of eligibility for family pension". Now eligibility for family pension is not the same concept as the concept of the period or point of time upto which the family pension is payable. It appears that eligibility for family pension has been dealt with in Para 195 while the time upto which the family pension is payable has been dealt with in para 5 of the Air Force Instructions, AFI 1/S-2/S of 64. That Regulation 195 deals with conditions of eligibility is also clear from Regulation 205. Regulation 205 of the Pension Regulation reads as under :

"205. The payment of family pension shall cease when the recipient ceases to fulfil the conditions of eligibility under regulation 195 or on his/her death whichever is earlier"

In our opinion the exception made by Regulation 195 (c) in the case of a widow who re-marries with her deceased husband's brother and continues to live a communal life with and/or contributes to the support of the other living eligible heirs has not been superseded by para 5 of the Air Force Instructions and the two provisions operate in different fields. No doubt a definition of family has been given in para 4 of the AFI but that definition itself specifies that it is for "purposes of these orders" which confines its application to the provisions of the AFI. Para 6 of the AFI which provides that family pension will not be payable to more than one member of a family at

the same time and para 7(b) of the AFI which provides that special gratuity will not be paid to a married personnel but their family will become eligible for family pension would therefore be governed by the definition of family in the AFI but the definition will not affect Para 195 of the Regulations which uses the expression 'relative' and not 'family'.

9. The respondents have annexed with the supplementary counter affidavit dated 16.03.2011 a copy of the circular of the Govt. of India, Ministry of Defence dated 31st Jan, 2001 addressed to the Chief of the three forces which has also been relied upon in the impugned order dated 12.10.2007 rejecting the claim for ordinary family pension. We shall now examine whether this circular has the effect of making a remarried widow ineligible for grant of ordinary family pension. The Circular dated 31.01.2001 deals with implementation of the government decision on the recommendation of the 5th Central Pay Commission regarding Disability Pension/War Injury pension, special family pension, liberalized family pension, dependent pension, liberalized dependent pension for the armed forces officers and personnel below officer rank retiring invaliding or dying in harness on or after 01.01.1996. Ordinary family pension has not been dealt with by this circular. Various provisions of this circular however indicate that in certain cases ordinary family pension can continue to be paid to a widow who has re-married. Para 5.8 deals with grant of Special Family Pension on re-marriage of a

widow. Sub para (b) of this para deals with grant of special family pension to a person below officer rank. We are quoting para 5.8 of this circular which reads as under :

“5.8 *Special Family Pension on remarriage of widow : Special Family Pension of remarriage of widow shall be regulated as*

follows:

(a) *Commissioned Officers*

i. *If she has children (aa) if she continues to support Full Special Family Pension to continue to children after remarriage widow.*

(ab) *if she does not support Ordinary Family Pension (OFP) equal to 30% of emoluments last drawn to the re-married*

widow:
50% of the Special Family Pension to the eligible children

(ii) *if widow has no children Full Special Family Pension to continue to widow.*

(b) PBOR

(i) If Special Family Pension is sanctioned to the widow:
same provisions as applicable to officers.

(ii) *Where first life award is*

sanctioned to parents.

(aa) If widow continues to support 50% of SFP to parents
children after re-marriage or 50 of SFP to widow
has no issues.

(ab) If widow does not support Full SFP to parents
children after re-marriage but Ordinary Famili
the children are supported by Pension to widow
the parents

(ac) If children are not supported 50% of SFP to parents
either by the re-married widow 50% SFP to eligible
or the parents children
Ordinary Family
Pension to widow

(ae) On death or disqualification of Full SFP to eligible
parents and the widow does not children Ordinary
support the children Family Pension widow.

It appears from sub clause (ab) of clause (i) of sub para (a) of
para 5.8 that even on re-marriage of a widow getting special family
pension who on remarriage ceases to maintain the children she will get
ordinary family pension equal to 30% of emoluments last drawn to the
re-married widow. Sub para (b) of para 5.8 makes applicable the same
provision to persons below officer rank. The same conclusion can be

drawn from Sub clauses (ab), (ac) and (ae) of clause (b) of para 5.8. If
the circular advances and does not weaken the applicant's case. I
the AFI 1/S-2/S is interpreted as having the effect of disqualifying the

entire class of remarried widows from the continuance of family pension after remarriage there would remain no remarried widow to whom ordinary family pension would continue to be payable under the circular dated 31.01.2001. Grant of family pension is a social welfare measure and even if two interpretations are possible, a liberal one in favour of the continuance of family pension to the widow ought to be adopted.

10. Ld. Counsel for the applicant relied upon the decision of the Principal Bench of the Tribunal in OA 187 of 2009 connected OA 122 of 2010 and OA 27 of 2010. Smt. Saroj Devi Vs. Union of India decided by the Principal Bench on 04.08.2010. This was a case of a widow whose ordinary family pension was dis-continued after her re-marriage. The Principal Bench relied upon the circular passed for implementation of the 6th Pay Commission dated 12.11.2008 wherein it is mentioned that the re-marriage is no more a condition to prevent the payment of family pension. The condition in the circular that it would be applicable only to persons retiring or dying after 01.01.2006 was found arbitrary and discriminatory. It would thus appear that there is now no embargo for payment of family pension to a widow who has re-married. On the basis of the decision of the Principal Bench the applicant ^{was} in any case may be eligible for family pension from the date the circular dated 12.11.2008 has been made applicable but her rights under the circular constitute a separate cause of action which does not affect the validity of the order impugned and therefore it is not necessary for us to

say anything more upon those rights. It is open to the applicant to make a representation on the basis of the circular before the Record Office which would be dealt with in accordance with law. For the reasons given above, we are of the view that a widow who has re-married with the brother of her deceased husband is not ineligible for continuance of ordinary family pension. The condition in the PPO, is repugnant to Para 195 (c) of the Regulations and therefore invalid. The impugned order dated 12.10.2007, Annexure A-3 which directs the dis-continuation of family pension to the applicant even though the applicant might have re-married the brother of her deceased husband is liable to be set aside. The factual question which remains to be considered is whether the person the applicant has re-married is her deceased husband's brother. Upon that point we are not expressing any opinion as clear averments in this regard with particulars are wanting in the petition nor have any documents been filed to support her stand. The Air Officer Commanding, Air Force Record Office shall call for the material from the applicant on this point and pass a fresh order. Counsel for the applicant states that he will file a representation alongwith with the relevant documents to the Air Officer Commanding, Air Force Records Office, Subroto Park, New Delhi within a month from today.

11. We shall now deal with the other relief regarding the rejection of the claim of the applicant for grant of special family pension. The claim of the applicant in this regard was rejected by a letter dated 06.06.2000 Annexure A-1 to the petition which is a copy of the letter of

the Air Force Records Office from which it appears that the CCDA (P) Allahabad had rejected that claim on the ground that the death of the applicant's husband had taken place for a cause not attributable to Military Service. In the 3rd Supplementary counter affidavit filed by the respondents in the Tribunal, the respondents have filed a copy of the court of inquiry proceedings relating to circumstances in which the death took place. The 3rd and 4th finding of the court of inquiry which are relevant in the present case are as follows :

"3. Late Cpl Singh R K Eleefit was not on Airforce duty and not on authorized leave and had left for Moradabad to meet his family in the long weekend from 27 Mar 99 to 29 Mar 99.

4. Late Cpl Singh R K boarded train No. 3152 Jamu-Tawi Sealdar Express at Moradabad on 28 Mar 99 at around 1100 hrs back to Sealdah station in reserved coach No. S9 (as per the ticked found on him). In between Rly Stn. Talit and Rly Stn Khana Jn. About 06 kms west of Rly Stn. Burdwan (W. B) he apparently seemed to have fallen from the running train accidentally and sustained serious head injuries and succumbed to his death at about 1530 hrs on 29 Mar 99. "

12. The station Commander has concurred with the finding of the Court of Inquiry and has found that the deceased was not on Air Force Duty nor returning from duty at the time of death. The grant of special family pension is governed by the Pension Regulation 189 whereunder it is payable if the death was on account of wound or injury attributable to Air force service or by on account of

aggravation by Air Force Service of a wound injury or disease which existed before or arose during Air Force Service. Attributability of the death to Air Force Service is a condition of eligibility for grant of Special family pension. No material has been placed by the applicant to establish that the death of her deceased husband occurred on account of any cause attributable to Air Force Service. We therefore, do not find any error in rejection of her claim for Special Family Pension.

13. For the reasons given above, the Transferred Application is partly allowed. The order dated 12.10.2007 of the Air Force Record is set aside and the Air Officer Commanding, Air Force Record office, New Delhi is directed to consider the grant of ordinary family pension to the applicant afresh in the light of this order and after considering the material which the applicant may file. The refund of any amount which may have been recovered from the applicant shall depend upon that decision.

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

(Justice Janardan Sahai)
Member (J)

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