

**Reserved**  
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ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

**Court No. 3**

**Transferred Application No. 1414 of 2010**

**Writ Petition No. 2309 of 2006 (S) of Madhya Pradesh High Court of  
Judicature Jabalpur: Bench at Gwalior**

Tuesday the 01<sup>st</sup> of October, 2013

**“Hon’ble Mr. Justice Virendra Kumar Dixit, Judicial Member  
Hon’ble Lt. Gen. B.S. Sisodia, Administrative Member”**

Smt. Kamla Devi, W/O Late Shri Gokul Prasad Parihar  
No. 6816590, Ex. sepoy, R/O Village Banheri, P.O. Kariawati  
Tehsil – Bhitwarwar, Distt. Gwalior, M.P.

**.....Applicant**

Versus

1. Union of India, Through the Secretary, Ministry of Defence, Secretariat, Government of India, New Delhi.
2. Army Medical Corps, Lucknow, U.P.
3. Controller of Defence Accounts (Pension), Allahabad, U.P.
4. District Sainik Welfare Officer, Gwalior, M.P.

**.....Respondents**

**Ld. Counsel appeared for the applicant : Shri A.K. Singh, Advocate**

**Ld. Counsel appeared for the respondents : Shri Alok Mathur, Advocate, Senior  
Central Government Counsel.**

**ORDER**

**Hon'ble Lt. Gen. B.S. Sisodia, Member (A)**

1. This matter has come before us from the Hon'ble High Court of Madhya Pradesh, Bench at Gwalior, by way of transfer under Section 34 of the Armed Forces Tribunal Act, 2007 and has been renumbered as Transferred Application No. 1414 of 2010.

2. The applicant vide this application has sought following reliefs:-

*(a) That, the respondents may kindly be directed to release the Military Pension and Family Pension to the petitioner with effect from 11.04.2001 to 22.08.2003 and 23.08.2003 onwards upto date since her husband expired on 22.08.2003.*

*(b) That, the orders dated 29.01.2005 and 27.07.2005 (Annex. P/7) may kindly be quashed.*

*(c) That, the respondents may also be directed to pay market rate interest over the accrued amount of pension within a stipulated time.*

*(d) That, the cost of this litigation and Advocate's fee may please also be allowed.*

*(e) That, any other benefit whatever this Hon'ble Court deems fit in the circumstances of the case may please also be allowed.*

3. In brief, that facts of the case is that applicant's husband, No 6816590 Sepoy Gokul Prasad was enrolled in the Army Medical Corps on 02.05.1963. He retired from army service on 01.06.1979 after rendering 16 years and 30 days service in the army. His Service Pension was sanctioned w.e.f. 01.06.1979 vide PPO No S/42867/79 (Pension payment Book bearing No T.S. 9202). Family pension was also notified vide PPO No. S/JN/5624/95 on the name of the applicant. Since then he was getting regular pension from Pension Disbursing Authority (P.D.A.), through Central Bank of India, Dabra, Gwalior (MP). After retirement from Army, Sep Gukul Prasad Parihar, i.e. husband of the applicant, got re-employment in the State Bank of India, Dabra, Gwalior (MP) as a security guard. After his re-

employment in the Bank, army pension which he was drawing was discontinued with effect from 11.04.2001, being not admissible. He died on 22.08.2003 while serving in the Bank. After his death, the Bank had granted family pension to the applicant vide Bank PPO No PPO/1908 dated 10.01.2004.

4. After death of Sep Gokul Ram, the applicant had approached the respondents for family pension as her husband had served in the army for 16 years and 30 days and he was getting service pension. However, instead of helping the widow, Army Medical Corps Records, Lucknow vide their letter dated 24.01.2005 had instructed the office of the PCDA (P), Allahabad (UP) to cancel Family Pension sanctioned to her vide PPO No S/JN/5624/95, on the pretext that she is being paid family pension by the Bank for her husband's second spell of service and hence; she was not entitled for the dual pension. Aggrieved, the applicant has filed this writ petition.

5. **Sri A.K. Singh, Learned Counsel for the applicant**, submitted that the applicant had been denied family pension by the Respondents was arbitrary and unjustified, as her husband had rendered 16 years and 30 days service in the Army and he was in receipt of service pension till the time he got re-employment in the Bank. Learned counsel has submitted that vide Government of India, Department of Pension & P.W.O.M. No 28/07/99-P & PW (B) (Vol.II) dated 11.04.2001, Government of India, Ministry of Defence letter No 2/CC/B/D (Pen./Services)/2001 dated 28<sup>th</sup> August, 2001 and Government of India, Ministry of Per P.G & Pension Deptt. Of Pen and Pen Welfare Notification No 1/19/96-P&PW (E) dated 27<sup>th</sup> Jul 2001, it has been made clear that family pension admissible under the Employees Pension Scheme 1995 and the Family Pension Scheme 1971, shall be allowed in addition to the family pension from military side. Learned counsel further submitted that the contention of the respondents vide their

impugned orders dated 29.01.2005 and 27.07.2005 that she was entitled only one pension is wrong. Learned counsel for the applicant quoted relevant portion of the ibid policy letters which entitles widow of ex-Servicemen for the dual family pension :-

**Copy of C.I. Dept of Pension & PW. OM No 28/07/99-P&PW (B) (Vol. II) dated 11.04.2001**

***“No limitation on civil pension for re-employed military pensioners drawing separate military pension.***

*The Government employees who got re-employment after rendering civil service are governed by the Provisions of Rule 18 and those who got re-employment in civil service after rendering military service are governed by Rule 19 CCS (Pension) Rules 1972, Rule 18(3) provides for limitation of pensionary benefits in the second spell of civil service. Rule 19 has no such provision for Limitation. However, in the case of military pensioners re-employed in civil service, Rule 18a (3) of CCS (Pension) Rules, 1972 was made applicable vide DP & AR's O.M. No 38/5/91-PU dated 05.03.1982.*

*2. The matter has been re-considered in consultation with Ministry of Finance and it has been decided that Rules 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 pay limitation as per provisions of Rule 18 (3) of CCS (Pension) Rules 1972.*

*3. The cases of re-employed military pensioners who opted for separate military and civil pension and whose cases were earlier decided otherwise, may be re-opened and pensionary benefits for civil service may be re-fixed without limitation as provided in preceding para.*

*4. All Ministries/Departments are requested to bring provisions of this OM to the notice of all Attached/subordinate Offices and Autonomous Bodies under administrative control of the concerned Ministries/Departments.”*

**Copy of GOI, MOD letter No 2/CC/B/D(Pen./services)/2001 dated 28<sup>th</sup> August 2001.**

***“Sub Grant of Family Pension under the Employees Pension Scheme 1995 and Family Pension Scheme 1971 in Addition to Family Pension from Military Side.***

Sir,

*I am directed to forward a copy of DP&PS's Office Notification No 1/19/96/P&PW(E) dated 27.7.2001. This will be applicable mutatis/mutandis to Armed Forces Personnel who were re-employed in the Organisations/Establishments where Employees Pension Scheme, 1995 and Family Pension Scheme, 1971 are in force. This will come into force on the date the ibid notification dated 27.07.2001 (copy reproduced below).*

2. *Corresponding regulations of Pension Regulations for Army/Air Force/Navy will be amended accordingly in due course.*
3. *This has concurrence of Defence (Fin/Pension).*

*Sd/- x x x*

*(S.R. Sharma)*

*Under Secretary to the Government of India*

**Copy of Govt. of India, Min. of Per P.G & Pension Deptt. of Pen and Pen Welfare notification No. 1/19/96-P&PW(E) dated 27<sup>th</sup> July 2001.**

**NOTIFICATION**

1. *S.O. \_\_\_\_\_ (E) in exercise of the powers conferred by the proviso to article 309 and clause (5) of article 148 of the Constitution and after consultation with the Controller and Auditor General of India in relation to persons serving in the Indian Audit and Accounts Department, the president hereby makes the following rules further to amend the Central Civil Services (Pension) Rules, 1972, namely:-*

(a) *These rules may be called the Central Civil Services (Pension) Amendment Rules, 2001.*

(b) *They shall come into force on the date of their publication in the Official Gazette.*

2. *In the Central Civil Services (Pension) Rules, 1972 in rule 54 Sub Rule (13(B), after the first proviso, the following proviso shall be inserted namely:-  
“Provided further that family pension admissible under the Employees Pension Scheme, 1995 and the family Pension Scheme, 1971, shall, however, be allowed in addition to the family pension admissible under these rules.”*

*Sd/-*

*(P.K. Brahma)*

*Additional Secretary to the Government of India*

6. He further submitted that now the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi letter dated 17.01.2013 has allowed dual family pension. However, the same has been made applicable w.e.f. 24.09.2012 whereas it should have been allowed from the date of death of the ex-soldiers.

7. In support of his contention, learned counsel for the applicant relied upon following judgements :-

- (a) Principal Bench, Armed Forces Tribunal, New Delhi in O.A. No 141 of 2010 in case of Smt Ombati Vs UOI decided on 29.09.2010.

(b) Armed Forces Tribunal Regional Bench, Kochi in O.A. No 82 of 2011 in case of K.P. Komalavally Vs UOI decided on 05.12.2012.

8. Learned counsel has submitted that suitable directions be issued to the respondents to pay family pension to the applicant from the date of her husband's death i.e, from 22.08.2003 and arrears of service pension sanctioned to her late husband from 11.04.2001 to 21.08.2003 with interest.

9. On the other hand, learned counsel for the respondents, Shri Alok Mathur, has argued that Sep Gokul Prasad Parihar had neither informed about his re-employment in the Bank nor any intimation of his death was communicated to the concerned authorities by the applicant. He submitted that respondents came to know about these facts, only on receipt of applicant's letter dated 23.12. 2004. He also stated that State Bank of India, Dabra, Gwalior(MP) had also not obtained clearance/no objection certificate from concerned army authorities while sanctioning family pension to the applicant. He has submitted that the Service Pension as well as Family Pension was correctly stopped as he/she was entitled for dual service pension/family pension from Government in terms of Para 219 of Pension Regulation for the Army 1961 (Part-1).

10. However, learned counsel for the respondents submitted that in view of the Government of India, Ministry of Defence, Department of Ex-Servicemen Welfare, New Delhi, letter No 01 (05)/2010-D(Pen-Policy) dated 17.01.2013, the applicant has been made entitled for dual Family Pension from 24.09.2012 onwards and now she is very much entitled for the dual family pension from 24.09.2012 onwards and not from the date of death of her husband , as claimed.

11. We have heard Ld Counsel for both the parties and perused the records. The question, however, stands concluded by the Principal Bench, Armed Forces Tribunal, New Delhi and Armed Forces Tribunal, Regional Bench, Kochi in the case of Original Application No. 161 of 2013, decided on 17.07.2013 and Original Application No. 82 of 2011 decided on 05.12.2012 respectively.

**12. The Principal Bench, New Delhi in O.A. No 270 of 2011, in the Case of Suman Naruka Vs Union of India & Others have observed that :-**

*First and foremost document is Notification dated 27.07.2001 issued by the Government of India Ministry of Defence, wherein it is stated that DP&PW office Notification dated 27.07.2001 will be applicable mutatis/mutandis to Armed Forces Personnel who were re-employed in the Organisations/Establishments where Employee's Pension Scheme 1995 and Family Pension Scheme 1971 are in force. This will come into force on the date of ibid notification dated 27.07.2001 of DP&PW is published in the Official Gazette, i.e. 27.07.2001. Corresponding regulations of Pension Regulations for Army/Air Force/Navy will be amended accordingly in due course."*

Based on this policy Hon'ble Principal Bench, New Delhi allowed the petition and directed the respondents to restore the Family Pension of the petitioner from the date she applied for the family pension.

13. It has been made amply clear in the judgment passed by Armed Forces Tribunal, Regional Bench Kochi also that military family pension is authorized to the widows/dependents of ex-servicemen from the date of their death in addition to civil family pension, relevant portion of which is appended below :-

*"Para 17. It is also significant to mention that the military pensioner is allowed to draw both military as well as civil pension until his death and there is no dispute to this extent. But surprisingly, the widow and other relatives of the military pensioner are not allowed to draw both the military and the civil family pension from the Government simultaneously. There does not appear to be any rationale behind this scheme. The pension as also the family pension is granted in lieu of the services rendered by the pensioner during the service period and is not in any way a bounty or a charity depending upon the sweet will of the employer, rather, a legal right of the pensioner and the family pensioner. In our view, the family pensioners need to be kept at par with the military pensioner in this regard. However, it is a matter for the consideration of respondent No 1, Union of India, and as such, we do not consider it proper to issue any direction in this regard.*

18. *In view of the aforesaid, all the above applications are allowed. The respondents are directed to pay to the applicants in O.A. 82 of 2011, O.A. 86 of 2012, O.A. 140 of 2012, O.A. 162 of 2012, O.A. 168 of 2012, T.A. 158 of 2010, O.A. 75 of 2010, O.A. 111 of 2012, O.A. 139 of 2012, O.A. 109 of 2010, O.A No 84 of 2011 and O.A. 126 of 2012, the military family pension with effect from the date of death of their husband in addition to the civil family pension in accordance with the observations made hereinbefore. The amount of the arrears shall be paid to the said applicants within four months from today. In case, the arrears are not so paid the unpaid amount will carry simple interest at the rate 7% per annum to be computed from the date falling immediately after expiry of the said period of four months, which shall be paid by the respondents to the concerned applicant. If certain formalities are required to be done or any application/option is required to be made by any applicant for the family pension, the respondents shall permit the concerned applicant to do so, without any objection”*

14. We are in respectful agreement with the above decisions. We are also of the opinion that in view of the policy letters on the subject, the applicant is entitled arrears of service pension of her husband which was stopped by the respondents. Thus, the Transferred Application deserves to be allowed.

15. In view of the aforesaid judgments and policy letters on the subject, the T.A. is allowed. We direct the respondents to grant her arrears of service pension which was stopped by the respondents when her husband was alive from 11.04.2001 to 22.08.2003 (upto the death of her husband) and, thereafter, Family Pension w.e.f. 23.08.2003. The amount of the arrears shall be paid to the applicant within three months from the date of receipt of certified copy of this order.

16. There shall be no order as to costs.

**(Lt. Gen. B.S. Sisodia)**  
**Administrative Member**

**(Justice V.K. Dixit)**  
**Judicial Member**

Ukt /DDS/-