

Court No.2**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****ORIGINAL APPLICATION NO 334 of 2015**

Wednesday, this the 20th day of July 2016

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)Rajendra Pratap Singh s/o late Subedar and Honorary
Captain Brijmohan Singh R/O Village-Behata P.O. Darpipur
H.A.L. Korwa Amethi, District-Amethi (earlier Sultanpur)

....Applicant

Ld. Counsel for the: **Shri B.N. Shukla, Advocate**
applicant

Versus

1. Union of India through Secretary Ministry of Defence,
New Delhi.
2. Chief Controller of Defence Accounts (PENSION)
Draupadi Ghat Allahabad.
3. Record Officer Corps of Military Police Records
Bangalore-560025.
4. Treasury officer Treasury office Sultanpur

.....Respondents

Ld. Counsel for the : **Shri Rajiv Pandey, Central**
Respondents. **Govt Counsel assisted by Col**
Kamal Singh, OIC Legal Cell.

ORDER (ORAL)

1. This is an application under Section 14 of the Armed Forces Tribunal Act, 2007 being aggrieved with the recovery of pensionary benefits provided to the applicant alleged to be in contravention of Government of India Order dated 17.01.2013.
2. We have heard Ld. Counsel for the parties and perused the records and proceed to dispose of the O.A. with the consent of the parties since affidavit have been exchanged.
3. Father of the applicant, namely, late Brijmohan Singh JC-7629 retired from the Indian Army and was sanctioned pension with effect from 01.09.1968. Late Brijmohan Singh expired on 09.12.1985 and after his death benefits of pension was extended to his wife Smt Pranpati Devi with effect from 10.12.1985 (mother of the applicant).
4. Smt Pranpati Devi also expired and the applicant was granted pension with effect from 12.09.1996 being dependent of late Brijmohan Singh. It is not disputed that applicant is a disabled person suffering from disability to the extent of 60%. On account of his disability, the applicant was granted pension with effect from 25.09.1999 with condition that it shall be made available to him till his marriage or availed his own source of livelihood. However, it appears that applicant was already

married hence he represented to the competent authority to correct the PPO for life or till earning the livelihood vide representation dated 04.12.2003. In pursuance to the representation submitted by the applicant, by order dated 15.01.2004 the P.P.O. dated 14.11.2003 was corrected by the respondent No 3 by substituting the earlier condition to the extent of marriage or source of livelihood, whichever is earlier. After due correction in the P.P.O. the respondents continue to pay pension through Treasury Officer, Treasury Sultanpur.

5. By letter dated 05.01.2009 the record officer called for details of family of the applicant by 31.01.2009 where upon the applicant supplied his family details.

6. Ld. Counsel for the applicant submitted that without issuing notice or affording opportunity of hearing the family pension granted to the applicant was stopped from 28.01.2009. Applicant preferred a writ petition in the High Court which was transferred to the Tribunal in pursuance of the provisions contained in Section 34 of the Armed Forces Tribunal Act, 2007 and was registered as T.A. No. 115 of 2012. The T.A. was disposed on 17.04.2013 as infructuous keeping in view subsequent policy dated 17.01.2013.

7. Ld. Counsel for the applicant submitted that after new policy dated 17.01.2013 the respondents proceed to recover family pension paid to the applicant with effect from 25.09.1999

till 31.01.2009. Further submission is that the respondents themselves paid pension to the applicant on their own keeping in view applicant's unemployment and disability to the extent of 60 % and there is no justification on their part to recover the pension already paid to the applicant, that too without serving any notice or affording opportunity of hearing. Representation submitted by the applicant could not get favour from the respondents. However, while giving reply to the applicant, vide letter dated 21.03.2014 it was informed that the applicant shall be entitled to family pension in pursuance of order of the Government of India dated 17.01.2013. It is submitted that the respondents by the impugned order dated 21.04.2014 stand by their order to recover pension paid to the applicant from 01.02.2009 to 23.09.2012 but assured to continue pension from 24.09.2012. Same order has been reiterated by impugned order dated 18.06.2014.

8. We fail to understand that once the respondents initiated to pay pension to the applicant in pursuance to order dated 17.01.2013, then what were the reasons to recover pension already paid for the period 25.09.1999 to 31.01.2009 and why pension has been stopped for the period from 01.02.2009 to 23.09.2012.

9. Order dated 17.01.2013 filed as Annexure A-11 to the O.A. provides that in accordance with existing rules disabled

son or daughter shall be eligible for family pension on his/her getting married or when he/she starts earning his/her livelihood and the same is endorsed in the P.P.O. However, in view of Government of India letter dated 17.01.2013, disabled or physically challenged son or daughter unable to earn his/her livelihood shall be granted family pension from 24.09.2012 even after his/her marriage. It seems that the applicant shall be entitled for family pension even after he has married or from 24.09.2012. Clause (a) of aforesaid letter further provides that all those persons who have already been paid family pension shall continue to avail the same even after marriage on production of certificate. It seems that persons who are already getting family pension even after marriage or disability shall be entitled to get the benefit in terms of Government of India order dated 17.01.2013. Letter dated 17.01.2013 is reproduced in its entirety as under:

*“No 02(03)/2010-D/(Pen/Policy)
Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare
New Delhi dated: 17th January, 2013*

To:

*The Chief of the Army Staff
The Chief of the Naval Staff
The Chief of the Air Staff*

SUBJECT : *Implementation of the Government Decision on the recommendations of Committee on the issues related to Defence Service Personnel and Ex-Servicemen, 2-12-Grant of family pension for life to handicapped children of Armed Forces Personnel*

Sir,

1. The under signed is directed to refer to the provisions contained in this Ministry's letter No A/49601/AG/PS-4 (e)/3363/Q/D(Pen/Ser)/05 dated 13.08.2008, which provides that the son or daughter of an Armed Forces Personnel who is suffering from any disorder or disability of mind 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 is eligible for lifelong family pension. Such disabled son or daughter, however, becomes ineligible for family pension on his/her getting married or when he/she starts earning his/her livelihood.

2. A Committee of Secretaries headed by Cabinet Secretary was constituted by the Government to consider various issues on pension of Armed Forces personnel and Ex-servicemen, who have recommended for continuance of family pension to mentally/physically challenged children who drew, are drawing or may draw family pension even after their marriage. The above recommendation of the committee has been accepted by the Government and the President is pleased to decide that the son or daughter of an Armed Forces Personnel who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn livelihood, granted family pension for life even after his/her marriage subject to fulfillment of other prescribed conditions as hitherto fore.

3. These orders shall take effect from 24th September 2012 and shall also cover past cases. The financial benefit in past cases shall, however, be granted from 24th September 2012 only.

4. *Pension Regulations of the three Services shall be amended in due course.*

5. *This issues with the concurrence of Finance Division of this Ministry vide their ID No. PC 1/10(12)/2012/FIN/PEN dated 10.01.2013.*

Hindi version will follow.

Yours faithfully

*Sd/- z z z z z z
(Malathi Narayanan)*

Under Secretary to the Government of India

Copy to:

As per standard distribution list”.

10. The sum and substance of letter dated 17.01.2013 is that in case, correctly or incorrectly, a person is being paid family pension, either disabled or otherwise, shall be entitled to get the same benefit. In case the respondents have permitted with regard to continuity of family pension, then there is no justification to recover the family pension which has already been paid. There appears no application of mind and arbitrary exercise of power by the respondents while directing recovery of pension already paid to the applicant from the year 1999.

11. Apart from above, the respondents have stopped family pension and proceeded with recovery without serving any notice or affording opportunity of hearing. It is trite law that civil rights cannot be adversely affected in contravention of principles of natural justice. Pension is not a bounty but right of an employee or his dependent in accordance with rules. Such right cannot be curtailed in violation of principles of natural

justice and in case it is done, it shall be hit by Article 14 of the Constitution of India; hence decision taken thereto shall be liable to be struck down.

12. Ld. Counsel for the applicant invited attention to the Tribunal to a recent judgment reported in (2014) 8 SCC 883, **State of Punjab & Ors etc. vs Rafiq Masih (White Washer) etc.** In the aforesaid judgment their Lordships of Hon'ble Supreme Court have recorded findings as under:-

“12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he

should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover”.

13. The present controversy seems to be squarely covered by the judgment of Supreme Court (supra) referred to hereinabove. Undoubtedly father of the applicant was group 'D' employee i.e. class IV.

14. In view of proposition of law enunciated in aforesaid judgment of Hon'ble Supreme Court no recovery could have been made by the respondents. Whatever amount has been paid to the applicant before the order of recovery shall not be recoverable and in case any amount has already been recovered it shall be refunded forthwith.

15. In any case since the decision taken by the respondents with regard to recovery of pension and stoppage of pension suffers from vice of arbitrariness and is violating of principle of natural justice, it shall not survive being hit by Article 14 of the Constitution of India.

16. Accordingly the present O.A. deserves to be allowed, hence allowed.

17. Impugned orders dated 21.03.2014 and 18.06.2014 passed by respondents No 2 and 3 are set aside to the extent they relate to recovery of pension already paid with all consequential benefits. Further respondents are directed to refund the amount of family pension already recovered from the appellant forthwith, say within a period of four months from the date of presentation of a certified copy of this order. The respondents shall further continue to pay family pension in terms of order dated 17.01.2013.

18. So far as stoppage of family pension by the respondents for the period in question, it shall be open to the applicant to represent before the competent authority which shall be looked into and decided in accordance with law within the aforesaid period.

19. O.A. is allowed accordingly.

No order as to costs.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)