

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 202 of 2018**Thursday, this the 29th day of July, 2021**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt. Laxmi Devi
(M/o 933836-H Late AC Ranjeet Singh Wpn Ftr)
W/o Shri Ganga Singh
R/o Vill & PO – Beradhar,
Tehsil – Tharali, Distt – Chamoli, Uttarakhand-246427**.... Applicant**Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh,**
Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence (Indian Air Force), South Block, New Delhi-110011.
2. Chief of Air Staff, Air HQrs, Vayu Bhawan, New Delhi, Pin – 110011.
3. Director-III, Air Headquarters, Directorate of Air Veterans, Subroto Park, new Delhi, Pin – 110010.
4. Office of joint CDA (Air Force), C/o AFCAO, Subroto Park, New Delhi, Pin – 110010.
5. PCDA (Pension) (AF), Draupadi Ghat, Allahabad (UP) – 211014.

... RespondentsLd. Counsel for the Respondents : **Shri Ashish Kumar Singh,**
Central Govt Counsel.**ORDER**

1. The instant Original Application has been filed on behalf of the petitioner under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the petitioner has sought following reliefs:-

- “A. To quash the impugned orders dated 08 Aug 2016 (Annexure A-1 of instant OA) & 08 Jul 2016 (Annexure A-2 of instant OA) wherein claim of the applicant has been denied for grant of family pension.
- B. To issue suitable orders or directions to the Respondents for grant of family pension with effect from 24.12.2011 (date of death of her son) and thereafter on regular basis.
- C. To pay the arrears of said family pension alongwith suitable rate of interest as deemed fit and proper by this Hon’ble Tribunal.
- D. Any other relief as considered proper by the Hon’ble Tribunal be awarded in favour of the applicant.
- E. Cost of the application as deemed fit and proper by this Hon’ble Tribunal in favour of the applicant as respondent No. 4 denied the claim of the applicant despite Govt. of India issued notification dated 30 Nov 2011.”

2. Brief facts of the case giving rise to this application are that the deceased soldier was enrolled in the Indian Air Force on 30.12.2009 and died on 24.12.2011 on account of Antemortem Drowning leading to Cardio Pulmonary Arrest accidentally while being on the posted strength of Air Force Station, Leh (J&K). At the time of death, applicant’s son was a bachelor and Shri Ganga Singh (father) and Smt. Laxmi Devi (mother) are recorded as dependent parents in the service records. As Shri Ganga Singh (father) is an Ex-serviceman and earning monthly pension of Rs. 18,126/-, office of the joint CDA (AF) rejected the claim for family pension as the combined annual income of both the parents was more than the Govt. prescribed limit. The grant of Ordinary Family Pension to parents of a deceased soldier of Armed Forces is dealt in accordance with Govt. of India,

Ministry of Defence letter dated 26.08.1998 read in conjunction with Govt. of India, Ministry of Defence letter dated 24.11.1999. As per Income Certificate dated 17.02.2014, issued by Tehsildar, Shri Ganga Singh (father) is an Ex-serviceman and getting monthly pension of Rs. 18,126/- whereas Smt Laxmi Devi (mother) earns Rs. 5000/- per month on account of agricultural income, combined income (Rs. 23,126/-) was more than the Govt. prescribed limit, Joint CDA (AF) rejected the claim vide letter dated 08.07.2016. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that the applicant died on 24.12.2011 on account of Antemortem Drowning leading to Cardio Pulmonary Arrest accidentally while being on the posted strength of Air Force Station, Leh (J&K). On 11.03.2014 applicant applied for grant of family pension alongwith supporting documents through Zila Sainik Kalyan Evam Punarvas Officer, Chamoli (Gopeshwar), Uttarakhand. The respondent No. 2 vide letter dated 29.08.2014 informed the applicant that JCDA (AF), New Delhi vide their letter dated 21.08.2014 has rejected the claim of the applicant stating that monthly income of the applicant and her husband is Rs. 18126/- which was more than the prescribed income limit for grant of family pension. On 07.07.2015, applicant again applied for grant of family pension stating that her husband is not residing with her for last six years and her income is Rs. 4000/- per month and she was fully dependent on her son but this time too, claim of the applicant was rejected seeking some clarifications on income stating that monthly

income of husband of applicant is more than prescribed limit and husband and wife is treated as one unit and not the separate unit unless and until they are not divorced.

4. Learned counsel for the applicant also submitted that as per Govt. of India, Min of Pers letter dated 30.11.2011, it has been clearly laid down that one family pension should not be counted as income for deciding eligibility criteria for grant of another family pension. He also placed reliance on the judgments of AFT (RB), Chandimandir in O.A. No. 1541 of 2014, **Smt. Amarjit Kaur vs. Union of India & Ors**, decided on 29.06.2016 and AFT (RB), Chennai O.A. No. 55 of 2015, **Smt. T. Poongodi vs. Union of India & Ors**, decided on 04.11.2016 and pleaded that applicant's case is squarely covered with these judgments and therefore, applicant should be granted family pension.

5. On the other hand, learned counsel for the respondents submitted that applicant's son died on 24.12.2011 on account of 'drowning' while in service and his death was considered non attributable to Air Force service. At the time of death, applicant's son was a bachelor and Shri Ganga Singh (father) and Smt. Laxmi Devi (mother) are recorded as dependent parents in the service records. As Shri Ganga Singh (father) is an Ex-serviceman and earning monthly pension of Rs. 18,126/-, office of the joint CDA (AF) rejected the claim for family pension as the combined annual income of both the parents was more than the Govt. prescribed limit. The grant of Ordinary Family Pension to parents of a deceased soldier of Armed Forces is dealt in accordance with Govt. of India, Ministry of Defence

letter dated 26.08.1998 read in conjunction with Govt. of India, Ministry of Defence letter dated 24.11.1999 which states '*Family Pension to the parents will be admissible if the parents were wholly dependent on the Armed Forces Personnel when he/she was alive and income criterion will be taken into account for both the parents when both are alive and it will be taken for single parent when only one of them is alive*'. As per Income Certificate dated 17.02.2014, issued by Tehsildar, Shri Ganga Singh (father) is an Ex-serviceman and getting monthly pension of Rs. 18,126/- whereas Smt Laxmi Devi (mother) earns Rs. 5000/- per month on account of agricultural income. Since the combined income (Rs. 23,126/-) was more than the Govt. prescribed limit, Joint CDA (AF) rejected the claim vide letter dated 08.07.2016. He pleaded for dismissal of O.A.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. We are of the view that family pension cannot be denied on the ground that there is another source of income in the family. If husband of the applicant is an ex-serviceman and getting service pension then applicant being mother of deceased soldier cannot be denied to get family pension after the death of her son to whom she was wholly dependent. As per law, mother of the deceased soldier is entitled to receive family pension and not father, if both are alive, hence, as per aforesaid judgments in the case of **Smt. Amarjit Kaur** (*supra*) and **Smt. T. Poongodi** (*supra*), case of the applicant is covered with these judgments and thus, the applicant being a

separate entity from his husband is very much entitled to receive family pension from the date of death of her son.

8. As a result, the O.A. is **allowed**. The impugned orders are set aside. The respondents are directed to grant family pension to the applicant for the period from the next date of death of her son (deceased soldier) i.e. w.e.f. 25.12.2011 for life. The respondents are directed to give effect to this order within four months from the date of receipt of a copy of this order. Default will invite interest @ 8% per annum till actual payment.

9. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 29th July, 2021

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