

**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW,
CIRCUIT BENCH AT NAINITAL**

ORIGINAL APPLICATION No. 523 of 2020

Wednesday, this the 04th day of August, 2021

**“Hon’ble Mr. Justice Umesh Chandra Srivastava (J)
Hon’ble Vice Admiral Abhay Raghunath Karve, Member (A)”**

Smt. Kala Devi, W/o No 4050036 Late Nayak Dhan Singh, R/o
Village – Sunargaon Gaid, Post Office- Gairsain, District –
Chamoli, Uttarakhand.

..... Applicant

Counsel for the Applicant : **Shri Kishore Rai, Advocate**

Versus

1. Union of India, Ministry of Defence through its Secretary,
South Block, New Delhi – 110001.
2. The Principal Controller of Defence Accounts (Pension),
Draupadighat, Allahabad-211014.
3. Senior Record Officer, Records Garhwal Rifles,
PIN- 900400, C/o 56 APO.
4. Narendra Singh Negi, S/o Dhan Singh Negi.
5. Harendra Singh Negi, S/o Dhan Singh Negi.
Both respondent No. 4 and 5, R/o Village – Bausad,
PO- Sainje, Gairsain, District- Chamoli.
6. Smt Seema, W/o Raghuvir Singh, R/o Village Chorasain,
PO- Saring Gaon, Gairsain, District – Chamoli.

.....Respondents

Counsel for the Respondents : **Shri Neeraj Upreti,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

1. The instant Original Application has been filed by the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

“(i) A direction to grant 100% family pension to the applicant from the date when family pension to respondent No. 4 has stopped i.e. 01.04.2018.

(ii) To summon the entire records of the applicant pertaining to computation of his family pension.

(iii) Any other relief to which the applicant is found entitled may also very kindly be granted to the applicant.”

2. In brief, the facts of the case are that husband of the applicant Ex Nk Dhan Singh was enrolled in the army on 08.03.1969 and was discharge from service on 01.04.1989 on completion of terms of engagement under Rule 13 (3) III (i) of Army Rule 1954. Consequent on discharged from the service, he was granted service pension vide PPO No S/041897/88 dated 11.12.1988. Ex Nk Dhan Singh was married to Smt Kala Devi (first wife) on 25.04.1971. After his retirement and 19 years of first marriage, Ex Nk Dhan Singh again married with Smt Shakuntala Devi (second wife) on 11.01.1990 while first marriage with Smt Kala Devi was in subsistence and three children born out of the wedlock with second wife. Name of the applicant is recorded in the service record of her husband as well as in Pension payment

order. Husband of the applicant died on 10.04.2009. As per law, 50% share of ordinary family pension was granted to Smt Kala Devi (first wife) and Mr. Narendra Singh (son of second wife) vide PPO No F/NA/018438/2011 and F/NA/018439/2011 respectively. After attaining the age of 25 years by Mr. Narendra Singh, the applicant Smt Kala Devi (first wife) approached respondents for grant of 100% ordinary family pension stating that Shri Narendra Singh born on 24.06.1991 has attained the age of 25 years, Smt Seema born on 04.06.1993 has married and Shri Harendra Singh born on 15.03.1995 has been enrolled in the army. Applicant was asked to produce certain documents for grant of 100% ordinary family pension. The applicant instead of submitting the necessary documents, has preferred the instant original application for grant of full family pension.

3. Learned counsel for the applicant submitted that applicant Smt Kala Devi is legally wedded wife. Her name is entered in service record as well as in PPO. Ex Nk Dhan Singh again married with Smt Shakuntala Devi after his retirement from army and her both sons are adult and her daughter is married hence they are not entitled for pension. Learned counsel for the applicant pleaded that in view of aforesaid, applicant be granted full ordinary family pension.

4. Per contra, learned counsel for the respondents submitted that it is not disputed that husband of applicant Ex Nk Dhan Singh

married with the applicant (Smt Kala Devi) and her name is recorded in service record of her husband. He further submitted that Ex Nk Dhan Singh after retirement from army again married with Smt Shakuntala Devi and two sons and one daughter born to her from this wedlock. However Smt Shakuntala Devi is not entitled for grant of family pension but children born to second wife are eligible for 50% ordinary family pension, if other conditions fulfilled. It has been ascertained that her both sons and daughter have become adult. Learned counsel for the respondents submitted that applicant was asked times and again to produce necessary documents for grant of full family pension but applicant has not produced complete documents hence full family pension was not granted to her. He further submitted that if the applicant submits the necessary documents as asked, she shall be granted full family pension.

5. We have heard Ld. Counsel for the parties and perused the material placed on record.

6. The questions which needs to be answered is whether applicant is entitled for grant of full family pension or not?

7. As per Regulation 66 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, definition of family has been defined as under:-

DEFINITION OF FAMILY

“66. Family for the purpose of Regulations in this Section shall consist of the following:-

(i) Wife in the case of male service personnel or husband in the case of female service personnel lawfully married before or after retirement.

(ii) A judicially separated wife or husband, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.

(iii) Unmarried daughters/ unmarried sons (including those legally adopted widowed/ divorced daughters.

(iv) Parents who were wholly dependent on the service personnel when he was alive.”

8. Regulation 63 of Pension Regulation for the Army 1961 (Part-I) as amended in 2008, reads as under:-

(b) Ordinary Family Pension

“**Para 63.** Where Service personnel dies in the circumstances mentioned in the Category A of the Regulation 82 of these Regulations :-

(i) Either while in service, provided he had been found fit after successful completion of the requisite training and medical examination for commission, or at the time of enrolment in the case of Personnel Below Officer Rank, or

(ii) After release/retirement/discharge/invalidment with a pension of any kind under these regulations”

9. In view of the aforesaid policies, it is amply clear that Smt Kala Devi, first wife of the deceased soldier being legally wedded wife is entitled to full Ordinary Family Pension.

10. In the instant case, applicant's name is recorded in service documents of her husband as well as in PPO of her husband. Smt

Shakuntala Devi (second wife) was married with Nk Dhan Singh while his first wife was alive and without taking divorce with first wife, hence Smt Shakuntala Devi (Second wife) is not entitled for family pension. Similarly, since, all her children are adult therefore, they are not entitled for pension.

11. In view of the facts and circumstances of the case, we are of the considered view that the applicant is entitled for full Ordinary Family Pension from the date children of Smt Shakuntala Devi has become adult as per Pension Regulation for the Army.

12. Thus, in the result, Original Application succeeds and is allowed. Applicant is directed to submit all requisite documents as asked by the respondents within one month. After receipt of the necessary documents, respondents shall grant full Ordinary Family Pension to the applicant from the date children of Smt Shakuntala Devi became adult. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from due date till the date of actual payment.

13. No order as to costs.

14. Pending applications, if any, are disposed of accordingly.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 04 August, 2021

UKT/-