

Reserved
Court-3
(Ser No. 7)

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

ORIGINAL APPLICATION No. 416 of 2022

Tuesday, this the 08th day of August, 2023

"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Maj Gen Sanjay Singh, Member (A)"

Smt. Santosh Devi Widow of No. 1082659-H Late LD Lakshman
 @ Lakahman Singh, resident of Village- Mirpur Jakher, Post Office-
 Rasulpur Dhalri, Tehsil & District- Meerut (U.P.), PIN Code-250626.

..... Applicant

Ld. Counsel for the : **Shri KKS Bisht**, Advocate.
 Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi -110011.
2. Chief of the Army Staff, Integrated Headquarters of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Director Infantry Legal, Directorate General of Infantry/Inf-9 General Staff Branch, Integrated HQ of Ministry of Defence (Army), PIN-900256, C/o 56 APO.
4. Officer-in-Charge Records, Armoured Corps Records, PIN-900476, C/o 56 APO.
5. Officer-in-Charge Records, DSC Records, PIN -900277, C/o 56 APO.
6. Office of the CGDA, Ulan Batar Road, Palam, Delhi Cantt-110010.
7. The Principal Controller of Defence Accounts (Pension) Draupadi Ghat, Allahabad (U.P) -211014.

.....Respondents

Ld. Counsel for the : **Ms. Appoli Srivastava**, Advocate
 Respondents. Central Govt. Counsel

ORDER

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

- (a) *Issue/pass an order or direction of appropriate nature to the respondent No. 4 to grant Family Pension claim to the applicant w.e.f. 04.10.2003.*
- (b) *Issue/pass an order or direction of appropriate nature to the respondents to pay arrear of Family Pension to the applicant from 04.10.2003 till date of payment alongwith interests.*
- (c) *Issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.*
- (d) *Allow this application with costs.*

2. Brief facts of the case are that applicant's husband was enrolled in Indian Army on 04.07.1984 and was discharged from service on compassionate grounds w.e.f. 30.04.2001 (AN) having rendered 16 years, 09 months and 27 days service. Being in receipt of service pension vide PPO No. S/016706/2001 he was re-enrolled in the Defence Security Corps (DSC) on 27.12.2001. During his service he was affected with "**Acute Inflammatory Demyelinating Polyneuropathy BT Malaria**" " and died while in service on 03.10.2003 at 1605 hrs at Military Hospital, Jodhpur. Accordingly, death of applicant's

husband being attributable to military service she was granted Special Family Pension w.e.f. 04.10.2003 vide PPO No. E/748/2004 dated 30.11.2004 payable through DPDO Meerut (UP) (Annexure A-5). Since applicant was granted Special Family Pension, her ordinary family pension from Army was stopped due to policy constraints at that time. After stoppage of family pension, applicant kept on approaching the respondent No. 4 for grant of Ordinary Family Pension but despite sending numerous representations, later it was known that case related to payment of dual family pension was under consideration with MoD. Grievance of the applicant is that she ought to be paid dual family pension which being denied by the respondents, this O.A. has been filed.

3. Learned counsel for the applicant submitted that applicant's husband was in receipt of service pension while serving in DSC and that is the reason she is entitled to receive Ordinary Family Pension from Army after her husband's death. He further submitted that after her husband's death Special Family Pension was sanctioned vide PPO No. F/748/2004 dated 30.11.2004 w.e.f. 04.10.2003 which she is in receipt of. It was further submitted that since the applicant has been sanctioned

Special Family Pension, her Ordinary Family Pension from Army was stopped due to policy constraints.

4. Learned counsel for the applicant further submitted that against non grant of Ordinary Family Pension a petition dated 07.11.2014 was forwarded to the Armoured Corps Records which was replied vide letter dated 03.01.2015 intimating that since she was already in receipt of Special Family Pension, she is not entitled to Ordinary Family Pension from Army due to policy constraints. It was also stated that in response to her representations respondents had communicated that a case was taken up with CGDA for clarification with regard to grant of dual family pension for those who have been granted Special/Liberalised Family Pension and the outcome is still awaited. Thereafter, numerous communications were made for grant of Ordinary Family Pension but every time it was intimated that case for grant of dual family pension is under consideration. The learned counsel further submitted that despite repeated requests and reminders to the respondents for grant of dual family pension to the applicant, the respondents are delaying and avoiding the genuine claim for no reason and therefore, the applicant is deprived of her fundamental rights to have

dual family pension. It was also submitted that consequent upon various correspondences, PCDA (P), Allahabad vide letter dated 13.07.2017 has also stated that clarification with regard to grant of dual family pension is still awaited from MoD. He pleaded for grant of dual family pension to the applicant.

4. On the other hand, learned counsel for the respondents submitted that applicant's husband was in receipt of service pension from Army when he was re-enrolled in DSC on 27.12.2001. He further submitted that while in service applicant's husband died on 03.10.2003 and accordingly, applicant was granted Special Family Pension vide PPO No. F/748/2004. His submission is that the competent authority i.e. PCDA (P), Allahabad did not accept the claim for grant of dual family pension to applicant and as per them a case has already been taken up with Integrated Headquarters of Ministry of Defence (Army) for issuing directions on admissibility of dual family pension for those family pensioners who have been granted Special/Liberalized Family Pension. His submission is that since clarification with regard to grant of dual family pension has not been received from the authorities

concerned, applicant has not been sanctioned/granted dual family pension.

5. Learned counsel for the respondents further submitted that previously there was no provision for grant of dual family pension but as per prevailing orders on the subject, but now dual family pension has been allowed to family of the deceased soldier in terms of policy letter dated 08.07.2019 as per which dual family pension has been made effective w.e.f. 24.09.2012. It was further submitted that based on PCDA circular No. 626 dated 19.08.2019, Armoured Corps Records vide letter dated 25.01.2020 had approached DPDO, Meerut for commencement of Ordinary Family Pension to the applicant w.e.f. 24.09.2012. It was further submitted that DPDO Meerut has intimated vide letter dated 08.08.2022 that PPO No. S/016706/2001 has already been cancelled by PCDA (P) Allahabad vide corrigendum PPO No. F/NA/7004/2004 stopping Ordinary Family Pension of the applicant and requested applicant to forward requisite documents through concerned Zila Sainik Kalyan Evam Punarvas Karyalaya for notification of PPO for resumption of Ordinary Family Pension which made effective w.e.f. 24.09.2012 but instead of sending the documents, this

O.A. has been filed. Concluding her submission learned counsel for the respondents contended that suitable orders be passed by this Tribunal to resume applicant's Ordinary Family Pension w.e.f. 24.09.2012 which she is entitled.

6. Heard Shri KKS Bisht, learned counsel for the applicant and Ms Appoli Srivastava, learned counsel for the respondents and perused the records.

7. No. 1082659H Ex LD Late Lakahman Singh was enrolled in Army on 04.07.1984 and he was discharged from service w.e.f. 30.04.2001 (AN) under Rule 13 (3) item III (iv) of Army Rules, 1954 on compassionate grounds at his own request. He was granted service pension vide PPO No. S/016706/2001. He was re-enrolled in the DSC on 27.12.2001 and during the course of his service he died on 03.10.2003 while admitted in Military Hospital, Jodhpur. After re-enrolment in the DSC, he opted not to count his former service towards DSC and continued to draw his service pension from Army. After death of the pensioner, applicant was granted Special Family Pension w.e.f. 04.10.2003 vide PPO No. F/748/2004 which she is in receipt of. Since applicant was granted Special Family Pension, her Ordinary Family

Pension from Army was stopped due to policy constraints at that time.

8. After stoppage of Ordinary Family Pension applicant submitted various representations and in response to her petitions she was informed that a case has been taken up with the competent authority seeking clarification for grant of dual family pension.

9. Prior to 17.01.2013 the next of kins of Armed Forces pensioner who got re-employed in civil department/PSUs/Autonomous bodies/Local Fund of Central/State Govt after getting retired from military service were authorized to draw Ordinary Family Pension either from military department or from civil department whichever was beneficial to them in terms of Govt of India, MoD letter dated 28.09.1992 and Regulation 78 of Pension Regulations for the Army, 2008 (Part-I). Subsequently, vide Govt of India MoD letter dated 17.01.2013 two family pensions were allowed w.e.f. 24.09.2012 in the event of death of a re-employed Army pensioner.

10. Govt of India, MoD vide letter dated 21.03.2013 passed orders that dual family pension is admissible

irrespective of the fact whether the re-employment was in civil or military department. Hence the family pensioners of military personnel re-employed in Army e.g. Territorial Army/Defence Security Corps (TA/DSC) are also covered in the ambit of the Govt of India, MoD letter dated 17.01.2013 for grant of dual family pension w.e.f. 24.09.2012. However, the admissibility of dual family pension was restricted to Ordinary Family Pension. Thereafter, the matter regarding extending the admissibility of Special Family pension/Liberalized Family Pension in cases of death attributable to military service in terms of Govt of India MoD letter dated 31.01.2001 in the case of dual family pension was examined and it was found that Department of Pension and Pensioners' Welfare Office Memorandum dated 24.01.2019 would apply to military/civil pensioners re-employed in military service and it is clarified that the provision of two family pensions, one in respect of military/civil service and Special Family Pension/Liberalized Family pension for re-employed military service is also applicable. Special/Liberalized Family pension if any, would be admissible in terms of Govt of India, MoD letter dated 31.01.2001 on death of a pensioner who was re-employed in military service and if

his death is attributable to military service, in addition to Ordinary Family Pension in respect of the previous military/civil service. It was also decided that where on death of the re-employed ex-serviceman if the family is eligible for Special/Liberalized Family Pension for first service, family pension for second spell of service would be Ordinary Family Pension. It was further decided that Special Family Pension/Liberalized Family Pension shall be granted only in respect of one service and in no case, Special Family Pension/Liberalized Family Pension will be granted for both the services. These provisions have been made effective w.e.f. 24.09.2012.

11. We find that clarification for grant of dual family pension has been issued vide Govt of India, Min of Def letter dated 08.07.2019 and on this authority PCDA (P), Allahabad has issued Circular No 626 dated 19.08.2019, which for convenience sake, is reproduced as under:-

"IMPLEMENTATION OF THE GOVT DECISION REGARDING GRANT OF DUAL FAMILY PENSION I.E. ORDINARY FAMILY PENSION (OFG) FROM MILITARY SERVICE AS WELL AS SPECIAL FAMILY PENSION (SFP)/LIBERALISED FAMILY PENSION (LFP) FOR RE-EMPLOYED MILITARY SERVICE

1. As per GoI, MoD letter No 01 (05)/2010-D(Pen/ policy) dated 17.01.2013 (Cir No 504 dated 17.01.2013), it was decided that the families of Armed Forces Personnel who got re-employed in Civil Departments/PSUs/Autonomous Bodies/Local Funds of Central/State Governments after getting retired from military service and were in receipt of military pension till death, shall be allowed to draw Ordinary Family Pension w.e.f. 24.09.2012 from military side in

addition to the family pension, if any, authorised from the re-employed civil department subject to fulfilment of other prescribed conditions as hitherto.

2. It was further clarified vide GoI, MoD letter No 10(17)/2012-D (Pen/Pol) dated 21.03.2013 (Cir No 513 dated 19.07.2013) that the dual family pension is allowable irrespective of whether re-employment was in civil or military department and family pensioners of DSC/TA personnel are also covered in the ambit of the GoI, MoD letter No 01 (05)/2010-D (Pen/Policy) dated 17.01.2013.

3. The issue regarding extending the admissibility of SFP/LFT as dual family pension in case of death attributable to military service is under consideration to Govt. It is now clarified vide Govt of India, Ministry of Defence letter No PC-2(6)/2013-D (Pen/Pol) dated 08.07.2019 that the provision of two family pensions, one in respect of military/civil service and SFP/LFP for re-employed military service is also applicable. SFP/LFP if any, would be admissible in terms of GoI, MoD letter No 1(2)/97/D(Pen-C) dated 31.01.2001 on death of a person who was re-employed in military service and if his death is attributable to military service, in addition to ordinary family pension in respect of the previous military/civil service with following conditions:-

(i) Where, however, on death of the re-employed ex-serviceman if the family is eligible for SFP/LFP for first service family pension for second spell of service would be OFP.

(ii) Special Family Pension/Liberalised Family Pension shall be granted only in respect of one service and in no case, SFP/LFP will be granted for both the services”.

12. Thus, from the aforesaid it is abundantly clear that Ordinary Family Pension is admissible along with Special Family Pension/Liberalised Family Pension but NOK of a deceased soldier is not entitled to receive two Special Family Pension/Liberalised Family Pension from two departments. In the instant case applicant was granted Special Family Pension after death of her husband during DSC service and claim of Ordinary Family Pension from military side was denied, which as per policy letter dated 08.07.2019 she is entitled to receive. We also find that the

financial benefits in the past cases will accrue with effect from 24.09.2012.

13. Additionally, the respondents while filing counter affidavit, in Para 7 and 8 have admitted that applicant is entitled for grant of dual family pension. For convenience sake, extract of Para 7 and 8 of counter affidavit are reproduced as under:-

"7. That thereafter PCDA (P) Allahabad Circular No 626 dt 19 Aug 2019, it was stated that 'issue regarding extending the admissibility of Special Family Pension/Liberalized Family Pension as Dual Family Pension, in case of death attributable to military service is under consideration to Govt. It is now clarified vide Govt of India, MoD vide letter No PC 2(6)/2013-D(Pen/Pol) dt 08 July 2019 that the provision of two family pensions, one in respect of military/civil service & SFP/LFP for re-employed military service is also applicable SFP/LFP if any, would be admissible in terms of GOI, MoD letter No 1(2)/97/D(Pen-C) dt 31 Jan 2001 on death of a pensioner, who was re-employed in military service & if his death is attributable to military service, in addition to ordinary family pension in respect of the previous military/civil service with following conditions:-

(i) Where, however on death of the re-employed ex-serviceman, if the family is eligible for SFP/LFP for first service family pension for second spell of service would be ordinary family pension.

(ii) Special Family Pension/Liberalized Family Pension shall be granted only in respect of one service & in no case, SFP/LFP will be granted for both the services.

8. That based on PCDA circular 626 dt 19 Aug 2019, Armoured Corps Records letter dt 25 Jan 2020, Photostat filed as Annexure CA-4, approached DPDO, Meerut of the applicant and requested to commence normal rate of ordinary family pension w.e.f. 24 Sept 2012 without further delay. x x x x"

14. In view of the above we hold that the applicant is entitled to receive dual family pension.

15. The O.A. is accordingly, **allowed**.

16. Impugned orders passed by the respondents are set aside. The respondents are directed to grant Ordinary Family Pension to the applicant w.e.f. 24.09.2012 but due to law of limitation the arrears shall be restricted to three years preceding the date of filing of this O.A., which was filed on 18.05.2022, in view of the Hon'ble Supreme Court judgment passed in the case of **Ex Naik Umed Singh Vs. Union of India and others, (2014) 4 PLR 356**. The respondents are further directed to grant Ordinary Family Pension to the applicant within four months from today. Default will invite interest @ 8% p.a.

17. No order as to costs.

18. Miscellaneous applications, pending if any, stand disposed of.

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : August, 2023
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