

RESERVED
Court No.1

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

ORIGINAL APPLICATION NO. 81 OF 2017

Wednesday this the 13th day of February, 2019

Hon'ble Mr. Justice S.V.S. Rathore, Member (J)
Hon'ble Lt Gen N.B.Singh, Member (A)

Mohd. Akhtar
Son of Mohd. Rafique
R/o Village – Sirwara
Post – Fatehpur Sangat
P.S. – Gosainganj
District – Sultanpur.

..... Applicant

Ld. Counsel for the Applicant : **Shri V.P. Pandey,**
Advocate

Versus

1. Union of India,
Through Defence Secretary, New Delhi.
2. Signal Mahanideshalaya Sig 4(c) General Staff Shakha
Integrated HQ of MOD (Army),
Dte General of Signal Sigs 4 (c)
General Staff Branch DHQ PO New Delhi – 110011.
3. Eastern Comd. Sig Regt PIN – 900285, C/o 99 A.P.O.
4. Signals Records 56 A.P.O. Jabalpur M.P.

..... Respondents

Ld. Counsel for the Respondents : **Shri D.K. Pandey,**
Central Govt Counsel.

ORDER**“Per Hon’ble Mr. Justice S.V.S. Rathore, Member (J)”**

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

- “1. To set aside/quash the impugned order contained as Annexure A-5 in the interest of justice.
- 1(a). Issue an order or direction to the opposite parties/respondent to sanction/give the family pension on the ground of blind, to the applicant after ignoring this fact that the name of applicant is not mentioned in the service book of his late father Mohd. Rafique.
2. Issue any other suitable order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case as also in the interest of justice and equity.
3. Allow the present original application with cost.”

2. The applicant in this O.A. has challenged the order dated 25.05.2011, whereby the prayer of the applicant was rejected. The said order reads as under:

“Tele 2843

Eastern Comd Sig Regt
PIN – 900285
C/o 99 APO

PC-318/Civ Adm/Sigs/Raffiq

25 May 2011

Mohd. Akhter
Late Mohd. Raffiq
Vill – Sirwara
PO – Fatehpur (Sangat)
Dist – Sultanpur (UP)

SUBJECT : FAMILY PENSION

1. Pls refer your application dt 30 Mar 2011 regarding family pension.
2. As you name was not found to be mentioned in service book of your father late Mohd. Raffiq direction from Signals Mahanideshalaya Sigs 4 (c),

General Staff Shakha, were asked vide our letter No PC 318/Civ Adm/Sigs/Raffiq dt 11 Jan 2011 (copy fwd to you also) for the matter concerning your eligibility for family pension.

3. As per Signals Mahanideshalaya Sigs 4(c), General Staff Shakha letter No R/44679/Pension/Sigs 4(c) dt 25 Jan 2011 (photocopy att), it has been clarified that as your name is not mentioned in the service book of your father you are not entitled any family pension & hence no action can be initiated from our end.

4. In view of the above, you are requested to approach Signals Mahanideshalaya Sigs 4(c), General Staff Shakha directly for any clarification on the issue.

Encls : As above

Sd/- x x x x x
(Abhinav Rishi)
Maj
OIC Civ Adm
For CO”

3. In brief, the facts of the case are that the applicant, who claim to be the eldest son of the deceased soldier Mohd. Rafique, has claimed for the family pension as he was totally blind. The applicant’s father retired from the post of Barber on 30.06.1984. After his retirement, on 26.06.2004 the mother of the applicant Smt Ameena died. Thereafter on 25.02.2007, the father of the applicant Mohd. Rafique also died. In the year 2010, the applicant after getting knowledge of the family pension on the ground of being complete blind, gave an application to the respondents and on the said application, the respondents made certain queries relating to the age of the applicant and other particulars. The applicant again sent complete details to the respondents. The respondents informed the applicant that his name does not figure in the service book of his late father Mohd. Rafique and on this ground, the claim of the applicant was denied.

4. Learned counsel for the applicant has filed a certificate of Chief Medical Officer, Sultanpur dated 25th January 2007, wherein the age of the present applicant Mohd. Akhtar has been shown as 55 years, that means at

present he is about 67 years of age and as per this certificate, the present applicant is blind.

5. Learned counsel for the applicant has placed reliance on Annexure No.8 to the O.A. which is a certificate issued by the SDM, Jaisinghpur, Sultanpur, which is a relation certificate issued on 21.12.2010, wherein apart from five other sons and daughters of Mohd. Rafique, the name of the applicant also figures. As per certificate, youngest daughter of Mohd Rafique was of 42 years in the year 2010.

6. Learned counsel for the respondents has raised objection on the certificate because at the bottom of the certificate, it is mentioned that this certificate has been issued only for administrative purposes and is valid only for an amount of Rs.5000/-. It cannot be used in any court of law.

7. Learned counsel for the applicant has placed reliance on the Regulations 216 and 219 of the Pension Regulations For The Army 1961 (Part-1), which reads as under :

“Eligible members of the family

216. The following members of the family of a deceased individual shall be viewed as eligible for the grant of a special family pension, provided that they are otherwise qualified: -

(a) widow/widower lawfully married. It includes a widow who was married after individuals' release/retirement/discharge/invalidment.

(b) Son actual and legitimate/including validly adopted.

(c) Daughter, actual and legitimate/ (including validly adopted).

(d) Father.

(e) Mother.

(f) Brother

Note 1-*The term “widow” used in the above or any other regulation in this sub-section in respect of special family pensionary awards shall be deemed to include such a widow who was married after the individual's discharge/invalidment.*

Note 2 -The term “child” used in the above or any other regulation in this sub-section in respect of special family pensionary awards shall be deemed to include such a child born out of a marriage after discharged/invalidment of the individual.

Note 3 -The term “father” and “mother” or “parents” used in the above or any other rule in this sub-section shall also be deemed to include such putative parents (or surviving parents as the case may be) as had not contracted a lawful marriage, but were living as husband and wife at the time of, or got lawfully married subsequent to, the conception of deceased member of the forces.”

“Conditions of eligibility for a family pension

219. A relative specified in Regulation 216 shall be eligible for the grant of family pension, provided;

General

- (i) he or she is not in receipt of another pension from Government;
- (ii) he or she is not employed under Government

Widow

- (iii) a widow has not remarried.

This condition shall not apply to a widow who remarried her deceased husband’s brother, and continues to live a communal life with and/or contributes to the support of the other living eligible heirs.

Son

- (iv) a son is below the age of 25 years.

Daughter

- (v) a daughter until she attains the age of 25 years or marriage whichever is earlier.

Parents

Second life Awards (special family Pension) shall be admissible to the parent (s) of the deceased and in the absence of the parents, eligible brother and sisters of the deceased of the rate of 50% of the special family pension determined vide Regulation 227(a), if the claimants was/were largely dependent on the deceased for support and is/are in pecuniary need.

Mother

- (vi) a mother who is a widow at the time of her son's death or who becomes a widow thereafter, has not remarried. If she had remarried before her son's death, she shall remain eligible for the special family pension, unless and until she again becomes a widow and remarries.

Brother/Sister

(vii) The brothers/sisters were largely dependent on the deceased for support and are in pecuniary need.

(viii) In the case of brother he has not completed the age of 25 years.

(ix) In the case of sister, she has not completed the age of 25 years or has not married.”

8. On behalf of the respondents, it has been argued that the applicant's father was discharged in the year 1984 and it is very surprising that the name of the applicant was not mentioned as nominee of his deceased father and the father of the applicant during his entire life time and even after several years of discharge till 2007, at no point of time, made any effort to get the name of the present applicant entered into his service record as his nominee. The claim of the applicant for grant of family pension was rejected on the ground that the name of the applicant has not been mentioned into the service record as nominee of the deceased soldier.

9. A plain reading of Regulations 216 and 219 of the Pension Regulations For The Army 1961 (Part-1), makes it clear that the name in the service record as son of the applicant was a condition precedent to grant the relief claimed, if the applicant was found to be entitled thereof. Admittedly, the name of the applicant was not mentioned as nominee in the service record of the deceased soldier. It gives rise to an inference that the father of the applicant deliberately avoided the name of the present applicant to be mentioned in the service record to debar the applicant from such pension. It is nowhere the case of the applicant that he has inherited any share of the property of his late father.

10. Learned counsel for the applicant could not furnish any reason as to why the father of the applicant avoided to get the name of the applicant entered into his service record as his nominee, while the names of the five other sons and daughters exist as nominees in his service record. This conduct of the father of the present applicant shows that he deliberately avoided to get the name of the present applicant entered as nominee in the

service record and now after such a lapse of long period, we do not consider it proper and appropriate to enter into this controversy, that too when other brothers and sisters have not been impleaded as opposite parties. Since the name of the applicant was not mentioned in the service record of his father, therefore, we do not find any illegality or irregularity in the impugned order, whereby the claim of the applicant for grant of family pension was rejected by the respondents.

11. Accordingly, this Original Application has no substance, deserves to be dismissed and is hereby **dismissed**.

(Lt Gen N.B. Singh)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated : February , 2019.
PKG