

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****ORIGINAL APPLICATION No. 205 of 2020**Tuesday, this the 11th day of January, 2022**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)Smt. Tara Basnet
Widow of 5849929-M Rfn (Late) Bikram Bahadur Basnet
R/o House No. 101/26, Gaucharan Colony, Sinamangal,
Kathmandu (Nepal)

..... Applicant

Counsel for the Applicant : **Shri R Chandra**, Advocate
Versus

1. Union of India, through the Secretary, Ministry of Defence, Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated HQ of Ministry of Defence (Army), DHQ PO, New Delhi – 110011.
3. The Officer-in-Charge Records 39 GR, PIN-900445, C/o 56 APO.
4. Adjutant General's Branch, Addl Dte Gen Personnel Services/PS-5, Room No. 18, Plot No. 108 (West), L-Block, Church Road, New Delhi – 110001.
5. Record Office Indian Embassy Kathmandu (Nepal).
6. The Chief Controller Defence Accounts, Draupadi Ghat, Allahabad-14 (UP).
7. Smt. Savitri Basnet, Mother of No. 5849929-M Rfn (Late) Bikram Bahadur Basnet, R/o Vill – Jhirmi Ratamata, Post – Tamghas, Simichar, Ward No. 10, Resunga Municipality, Gulmi (Nepal).

.....Respondents

Counsel for the Respondents : **Dr. Shailendra Sharma Atal**,
Central Govt. Counsel

ORDER

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) The Hon’ble Tribunal may be pleased to set aside the order dated 09/03/2016 (Annexure No. A-1).*
- “(II) The Hon’ble Tribunal may be pleased to direct the respondents to restore 100% Liberalized Family Pension in her favour w.e.f. 02.04.2002 (date of death) with the interest at the rate of 18% per annum.*
- “(iii) Any other appropriate order or direction which this Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case including cost of the litigation.”*

2. Facts giving rise to Original Application in brief are that husband of applicant was enrolled in the Army on 01.07.1998 and martyred on 02.04.2002 in “OP PARAKRAM” during an encounter with terrorists. Subsequently, Smt. Savitri Basnet, mother and Smt. Tara Basnet, widow of deceased soldier (applicant) reported to Record Office Indian Embassy (ROIE), Kathmandu (Nepal) for grant of family pension in their favour. Based on Government of Nepal documents, a detailed investigation was carried out by Record Office, Indian Embassy, Kathmandu and it was revealed that applicant had solemnized marriage with the deceased soldier on 08.12.2001. However, Part II Order of marriage was not published during life time of deceased soldier probably due to death of the soldier in less than four months of marriage. The deceased soldier had nominated his mother for grant of family pension and other pensionary benefits during his service time. Therefore, 50% Liberalized Family Pension

(LFP) was granted each to Smt. Savitri Basnet (Mother) and the applicant vide PCDA (P) Allahabad PPO No. F/BC/975/2002 and F/BC/974/2002 respectively. The applicant requested to President of AWWA, New Delhi for 100% LFP, therefore, parents and the widow of the deceased soldier were called for re-investigation of the case. However, applicant was denied 100% share in view of para 118 (a) (iii) of Pension Regulations for the Army, 2008. The applicant approached AG's Branch, Army Headquarters for 100% LFP in her favour vide letters dated 02.04.2016, 11.07.2016, 02.10.2016; however, no fruitful result came in favour of the applicant and her claim for 100% LFP was rejected by the respondents. Being aggrieved, the applicant has filed this Original Application.

3. Learned counsel for the applicant submitted that applicant's husband was enrolled in the Indian Army on 01.07.1998. On 08.12.2001, applicant's marriage was solemnized with deceased soldier but Part II Order regarding marriage could not be published. On 02.04.2002, applicant's husband died due to Gun Shot Wound during an encounter with terrorists in CI Ops (OP PARAKRAM) in Jammu and Kashmir. At the time of enrolment Smt. Savitri Basnet, mother of deceased soldier was nominated as heir. At the time of preparation of pension claim in Record Office, Indian Embassy, Kathmandu, applicant with consent of her parents, agreed for division of pension between her and her mother-in-law.

4. Learned counsel for the applicant further submitted that father of deceased soldier is also an ex-serviceman of Indian Army and

drawing service pension about Rs. 30,000/- per month vide PPO No. S/033090/1995. Mother of deceased soldier is dependent on her husband who is getting service pension. Applicant's mother-in-law and father-in-law did not intimate to Army authorities regarding marriage of the applicant. After holding inquiry by the Army authorities the mother-in-law gave her consent to share 50% of pension, DCRG and Ex-gratia to the applicant. Accordingly, Liberalized Family Pension @ 50% was sanctioned to applicant and mother of the deceased soldier. On 07.12.2015, applicant requested to President of AWWA, New Delhi for 100% LFP. Therefore, parents and the widow of the deceased soldier were called for re-investigation of the case. However, applicant was denied 100% share in view of para 118 (a) (iii) of Pension Regulations for the Army, 2008. The applicant approached AG's Branch, Army Headquarters for 100% LFP in her favour vide letters dated 02.04.2016, 11.07.2016, 02.10.2016; however, no fruitful result came in favour of the applicant and her claim for 100% LFP was rejected by the respondents in a most arbitrary, illegal and malafied manner. He pleaded for grant of 100% LFP in favour of the applicant.

5. Per contra, learned counsel for the respondents submitted that husband of applicant was enrolled in the Army on 01.07.1998 and martyred on 02.04.2002 in "OP PARAKRAM" due to Gun Shot Wound during an encounter with terrorists. Subsequently, Smt. Savitri Basnet, mother and Smt. Tara Basnet, widow of deceased soldier (applicant) reported to Record Office Indian Embassy (ROIE), Kathmandu (Nepal) for grant of family pension in their favour. Assistant Military Attache

(Records) is authorized to carry out ground investigation of cases of deceased soldiers residing in Nepal in terms of Paras 174(a) and 174(m) of Regulations for the Army, 1987. Based on Government of Nepal documents, a detailed investigation was carried out by Record Office, Indian Embassy, Kathmandu and it was revealed that applicant had solemnized marriage with the deceased soldier on 08.12.2001. However, Part II Order of marriage was not published during life time of deceased soldier probably due to death of the soldier in less than four months of marriage. The deceased soldier had nominated his mother for grant of family pension and other pensionary benefits during his service time. Therefore, 50% Liberalized Family Pension (LFP) was granted each to Smt. Savitri Basnet (Mother) and the applicant vide PCDA (P) Allahabad PPO No. F/BC/975/2002 and F/BC/974/2002 respectively.

6. Learned counsel for the respondents further submitted that during ground investigation, it was also revealed that father of deceased soldier is an ex-serviceman of Indian Army and presently drawing service pension @ Rs. 24,479/- per month. Despite all the facts, Smt. Savitri Basnet, mother of the deceased soldier who was nominee to receive 100% family pension agreed to waive off 50% Liberalized Family Pension, Death cum Retirement Gratuity and Ex-Gratia as per the provisions of Para 118 (a) (iii) of Pension Regulations for the Army, 2008 which states "***If an heir (other than widow) who is nominated for special family pension, waives his or her claim in favour of the widow, the pension shall be granted***

to her, provided she is eligible on the date". Consequent upon the same, 50% share of LFP was granted each to Smt. Savitri Basnet, mother and the applicant. Thereafter, applicant submitted many letters to AG's Branch, Army Headquarters for grant of 100% LFP in her favour and therefore, case was re-investigated by the authorities and following has been revealed :-

- (a) The applicant has not re-married till date but still not living with the parents of the deceased soldier. Both the family pensioners have no cordial/healthy relationship.
- (b) Mother of the deceased soldier has denied to waive off 100% LFP to widow as per para 118 (a)(iii) of Pension Regulation for the Army 2008.

7. Learned counsel for the respondents further submitted that despite knowing the facts that as per Para 118 (a) (iii) of Pension Regulations for the Army, 2008 (Part-1), the applicant is not eligible for restoration of 100% LFP, the applicant has filed the present O.A. before this Tribunal for grant of 100% LFP. The applicant is eligible for restoration of 100% LFP only on death/disqualification of mother of the deceased soldier. However, at this stage, the applicant is not eligible for restoration of 100% LFP in her favour as per rules on the subject. Para 118 (a) of Pension Regulations for the Army, 2008 (Part-1) reads as under :-

- "118. (a) Where there is a nomination –
 - (i) If on the date on which the Principal Controller of Defence Accounts (Pensions) decides that the claim to special family pension is admissible, the nominated heir is alive and eligible, the pension shall be granted to him or her.

(ii) If on the date referred to above, the nominated heir is dead or disqualified, the pension shall be granted to the heir who stands highest in the list of living eligible heirs.

(iii) If an heir (other than the widow) who is nominated for the special family pension, waives his or her claim in favour of the widow, the pension shall be granted to her, provided she is eligible on the date referred to in sub clause (i) above.”

In view of aforesaid, learned counsel for the respondents pleaded for dismissal of O.A.

8. We have heard learned counsel for the parties and have also perused the record.

9. We find that during investigation by Record Office, Indian Embassy, Kathmandu, with regard to grant of Liberalized Family Pension between widow and mother of the deceased soldier, it was revealed that applicant had solemnized marriage with the deceased soldier but Part II Order of marriage was not published during life time of deceased soldier and the deceased soldier had nominated his mother for grant of family pension and other pensionary benefits during his service time. Therefore, 50% Liberalized Family Pension (LFP) was granted each to Smt. Savitri Basnet (Mother) and the applicant vide PCDA (P) Allahabad PPO No. F/BC/975/2002 and F/BC/974/2002 respectively.

10. We also find that Smt. Savitri Basnet, mother of the deceased soldier who was nominee to receive 100% family pension agreed to waive off 50% Liberalized Family Pension, Death cum Retirement Gratuity and Ex-Gratia as per the provisions of Para 118 (a) (iii) of Pension Regulations for the Army, 2008 (Part-1). Therefore, applicant's prayer for 100% share of LFP in her favour is against the

provisions of Para 118 (a) (iii) of Pension Regulations for the Army, 2008 (Part-1) and therefore, applicant is not entitled to 100% share of LFP in her favour disallowing to mother from her 50% share.

11. In the result, we hold that claim of 100% share of LFP in favour of the applicant after disallowing to mother from her 50% share has rightly been rejected by the respondents as per rules which needs no interference. Resultantly, O.A. is **dismissed**.

12. No order as to cost.

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

Member (A)

Member (J)

Dated: January, 2022

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