

Court No. 3

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 507 of 2022

Monday, this the 09th day of January, 2023

"Hon'ble Mr. Justice Anil Kumar, Member (J)
Hon'ble Vice Admiral Atul Kumar Jain, Member (A)"

Mukesh S/O (Late) Rajendra Singh (Ex NK No. 2861071-L) R/o
Village-Anehra, Post-Saidpur, Teh-Bulandshahr Dist :
Bulandshahr (UP)-245411

..... Applicant

Ld. Counsel for the : None for the applicant.
Applicant

Versus

1. The Union of India Rep by the Secretary, Govt of India
Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters of
MoD(Army) Post-DHQ, New Delhi-110 011.
3. The Officer-in-charge, The Records, Rajputana Rifles, PIN-
900106, C/o 56 APO.
4. PCDA (P) (Army), Draupadi Ghat, Allahabad (U.P.)-212114.

.....Respondents

Ld. Counsel for the : **Shri Ram Saran Awasthi**, Advocate
Respondents. Central Govt. Counsel

ORDER (Oral)

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:-

(A) to quash and set aside the Respondents Letter No. RNE/FP/DAR/2861071 dated 16 Apr 2022 (Annexure A-1 of Instant OA & Impugned Order).

(B) to issue/pass an order or directions of appropriate nature to the respondents to grant ordinary Family Pension to the applicant with effect from next date of death of his mother Smt (Late) Ranveeri (died on 09 Nov 2018) and to pay the arrears along with suitable rate of interest as deem fit by this Hon'ble Tribunal.

(C) Any other relief as considered proper by the Hon'ble Tribunal be awarded in favour of the applicant.

2. Brief facts of the case are that father of the applicant No 2861071L late Ex NK Rajendra Singh was enrolled in the army on 05.12.1967 and retired on 31.12.1982 after rendering of 15 Years and 27 days service. He was granted service pension as per rules. Applicant's father died on 25.11.2014 and thereafter, applicant's mother Smt Ranveeri was granted family pension. She died on 09.11.2018. The applicant is a handicapped person, suffering from Locomotor disability as PPRP (Post Polio Residual Paraparesis) right lower limb with permanent disablement and the percentage of disability of the applicant is 40% as per certificate dated 16.12.2019 (Annexure A-10) issued by Chief Medical Officer Bulandshahr. The applicant after death of his mother preferred representation before the respondents requesting therein for grant of family pension being disabled son

of his parents which was rejected vide order dated 16.04.2022 (Annexure A-1). Being aggrieved, the applicant has filed instant Original Application for grant of family pension.

3. Learned counsel for the applicant pleaded that father of the applicant who was in receipt of service pension died on 25.11.2014 and thereafter, his mother was granted service pension after death of his father and she also expired on 09.11.2018. It was further submitted that the applicant being a handicapped son of his parents having 40% disability is unable to earn his livelihood. He further submitted that as per Govt of India, Min of Def letter No 906/A/D(Pen/Serv)/05 dated 13.08.2008 applicant is fully entitled for family pension. Applicant submitted representation to respondent No. 3 requesting for grant of family pension, but the same was rejected vide letter dated 16.04.2022 stating that in disability certificate it is not mentioned that applicant is unable to earn his livelihood and disability certificate has been prepared on 16.12.2019 i.e. after the death of applicant's parents. Learned counsel for the applicant pleaded that directions be issued to set aside the impugned order dated 16.04.2022 and grant of Family Pension to applicant from the next of death of his mother.

4. On the other hand, submission of learned counsel for the respondents is that father of the applicant was married to late Smt Ranveeri and blessed with son viz. Mukesh. Father of the applicant died on 25.11.2014 and Mother of the applicant died on

09.11.2018. After death of his mother, Mr. Mukesh (applicant) filed application for publication of Part II Order along with birth certificate and disability certificate claiming to be son of the deceased soldier through Zila Sainik Kalyan Evam Punarvas Kalyan Office, Bulandshahr. Part II Order was published vide No. 1/0817/0001/2021 as disabled son of deceased Shri (Late) Rajendra Singh. Learned counsel for the respondents further submitted that applicant's representation for grant of family pension along with arrears was rejected vide letter dated 16.04.2022 on the ground that the disability certificate is old and in the certificate it has not been mentioned that the applicant is unable to earn livelihood. He pleaded for dismissal of O.A.

5. Heard Shri Ram Saran Awasthi, learned counsel for the respondents and perused the record.

6. As per Department of Pension & Pensioners Welfare, letter No 1/5/09-P&PW (E) 90192, dated 22 October 2013 those children who are dependent and meet other condition of eligibility for grant of family pension at the time of death of the Government servant, are eligible for grant of family pension. A Disabled child may be eligible for family pension provided he/she fulfils all eligibility conditions at the time of death of his/her parents and on the date his/ her turn to receive family pension comes and the clause "he is unable to earn his livelihood" should be endorsed in disability certificate.

7. As per Regulations 68 (b) of Pension Regulation for the Army Part-I (2008) "Ordinary family pension shall first be payable to the surviving spouse and in his/her absence or in the event of his/her disqualification or death, to the eligible child in the order of birth irrespective of the sex of the child and the younger of them will not be eligible for family pension unless the elder above him becomes ineligible for the grant of ordinary family pension. Regulations 69 (a) (I) & (b) of Pension Regulation for the Army Part-I (2008) stipules that "The ordinary family pension shall be paid to a physically/mentally handicapped child through the guardian as if he or she was a minor except in the case of the physically crippled or disabled son/daughter, who has attained the age of majority. However, in the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the service personnel/ pensioner, as the case may be, and in case no such nomination has been furnished to the Army Headquarters/ Record Office by such service personnel or pensioner during his life time, to the person nominated by spouse of such service personnel or family pensioner, as the case. Further as per Govt of India, Min of Def (Department of Ex Servicemen Welfare) letter dated 15 May 2015 "The employee/pensioner/family pensioner may, at any time before or after retirement/death of Armed Forces Personnel, make a request to the Appointing Authority seeking advance approval for grant of family pension for life to a permanently disabled

child/sibling in terms of provisions contained in Govt of India, Min of Def letter dated 27 August 1987 as amended vide GOI, MoD Letter dated 13 August 2008. As per Para 1 and 2 of Govt of India, Min of Def, letter dated 15 May 2015, a physically/mentally disabled son/daughter would be eligible for family pension. If disability of the claimant occurred during the life time of his parent and is of such nature so as to prevent him/her from earning his livelihood and the same shall be endorsed in the disability certificate. In addition to this, the monthly income of the claimant should not be more than Rs. 3500/- pm + DA wef January 2006 and Rs. 9000/- pm + DA w.e.f. 01 January 2016 in terms of Explanation 3 appended below Regulation 69 of Pension Regulations for the Army, Part I (2008) and various Govt letters issued from time to time.

8. In the emerging facts and circumstances, the question to be answered by our judicious conscience is whether the ordinary family pension can be granted to the applicant or not by considering the objections raised by the respondents.

9. As far as grant of Ordinary Family Pension for life and Ordinary Family Pension to Physically/Mentally Handicapped Children is concerned, in this regard, Regulation 68 (b) and Regulation 69 of Pension Regulations for the Army, Part-I (2008) is relevant, which for convenience sake is reproduced as under:-

Ordinary Family Pension to only one Member of a Family

68. (a) xxxxx.

(b) The ordinary family pension shall first be payable to the serving spouse and in his absence or in the event of his disqualification or death, to the eligible child in the order of birth irrespective of the sex of the child and the younger of them will not be eligible for family pension unless the older above him becomes ineligible for the grant of ordinary family pension.

(c) & (d) xxx xxx.

ORDINARY FAMILY PENSION TO PHYSICALLY/MENTALLY HANDICAPPED CHILDREN

"69. (a) If a son or daughter is suffering from any disorder or disability of mind including mentally retarded or is physically crippled or disabled so as to render him/her unable to earn a living even after attaining the age of 25 years, the ordinary family pension shall be payable to the child for life in the order as set out in Regulation 68 of these Regulations and also subject to the following conditions:

(i) The ordinary family pension shall be paid to such son or daughter through the guardian as if he or she was a minor except in the case of the physically crippled or disabled son/daughter who has attained the age of majority. However, in the case of a mentally retarded son or daughter, the family pension shall be payable to a person nominated by the service personnel/pensioner, as the case may be, and in case no such nomination has been furnished to the Army Head Quarters/Record Office by such service personnel or pensioner during his life time, to the person nominated by the spouse of such service personnel or family pensioner, as the case may be, later on.

(ii) to (iii) xxxx xxxx .

(b) Before allowing the ordinary family pension for life to any such son or daughter, the appointing authority shall satisfy himself that the handicap is of such a nature so as to prevent him/her from earning his livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and 2 other members, out of which

at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation, setting out as far as possible, the exact mental or physical condition of the child. (c) The person receiving the ordinary family pension as a guardian of such son or daughter or such son or daughter not receiving the ordinary family pension through guardian, shall produce a certificate from a Medical Board of aforesaid composition, if the disability is permanent and if the disability is temporary, once in every 5 year, to the effect that he/she continues to suffer from disorder or disability of mind or continues to be physically crippled or disabled.

(d) to (e) xxxx xxxx

Explanations:

1. For the purpose of grant of ordinary family pension under this Regulation, the disability that manifests itself before or after the retirement or death of the service personnel shall be taken into account. This benefit will also be admissible to the eligible disabled children whether born before or after retirement.

2. A disable son/daughter shall become ineligible for ordinary family pension under this Regulation from the date he/she gets married.

3. Ordinary family pension payable under this Regulation shall be stopped from the date of earning more than Rs. 2550/- per month from any source. It shall be the duty of the guardian or son or daughter to furnish a certificate to the Pension Disbursing Authority, annually to the effect that:

(i) he/she has not started earning his livelihood.

(ii) he/she has not yet married.

4. The divorced/widowed daughter shall not be require to come back to parental home to become eligible.

10. As per the material available on record and not disputed by the respondents, the applicant being handicapped is the only legal heir of deceased Late Nk Rajendra Singh. As per the

Disability Certificate issued by Chief Medical Officer, Bulandshahr, applicant has been diagnosed with Locomotor disability as PPRP (Post Polio Residual Paraparesis) right lower limb with wasting and shorting with permanent disablement @ 40%. It implies that none other than the applicant can be said to be dependent upon late Nk Rajendra Singh after his parents death for grant of family pension, therefore, applicant can be granted this benefit. It may be appreciated that 40% disabled person may not be able to earn a decent livelihood. The objections raised by the respondents are that none of his deceased parents during their life time ever declared his disability and applicant has declared his disability after death of his parents, therefore, he is not eligible for family pension.

11. The grant of Ordinary Family Pension is governed by Regulation 212 of the Pension Regulations for the Army, 1961 (Part-I), reproduced in Army Instruction 51 of 1980. AI 51/80 is reproduced below for ready reference:-

"Grant of Ordinary Family Pension

1. In supersession of all existing orders on the subject, the family pensionary benefits, as detailed in paragraph 2 and subsequent paras will be admissible to the families of the Armed Forces personnel (excluding families of reservists), who were in service on 1.1.1964 or who joined/ join service thereafter and who died/ die while in service or after retirement with a retiring, disability or invalid pension/ special pension, on account of causes which are neither attributable to nor aggravated by service.

2. to 7. xxx xxx xxx"

12. Persons who are already getting family pension even after marriage or disability shall be entitled to get the benefit in terms of Government of India order dated 17.01.2013. Letter dated 17.01.2013 is reproduced in its entirety as under:-

"No 02(03)/2010-D/(Pen/Policy)

Government of India
Ministry of Defence
Department of Ex-Servicemen Welfare
New Delhi dated: 17th January, 2013

To:

The Chief of the Army Staff

The Chief of the Naval Staff

The Chief of the Air Staff

SUBJECT : Implementation of the Government Decision on the recommendations of Committee on the issues related to Defence Service Personnel and Ex-Servicemen, 2-12-Grant of family pension for life to handicapped children of Armed Forces Personnel

Sir,

1. The under signed is directed to refer to the provisions contained in this Ministry's letter No A/49601/AG/PS-4 (e)/3363/Q/D(Pen/Ser)/05 dated 13.08.2008, which provides that the son or daughter of an Armed Forces Personnel who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years is eligible for lifelong family pension. Such disabled son or daughter, however, becomes ineligible for family pension on his/her getting married or when he/she starts earning his/her livelihood.

2. A Committee of Secretaries headed by Cabinet Secretary was constituted by the Government to consider various issues on pension of Armed Forces personnel and Ex-servicemen, who have recommended for continuance of family pension to mentally/physically challenged children who drew, are drawing or may draw family pension even after their marriage. The above recommendation of the committee has been accepted by the Government and the President is pleased to decide that the son or daughter of an Armed Forces Personnel who is suffering from any disorder or disability of mind or is physically crippled or disabled so as to render him or her unable to earn livelihood, granted family pension for life even after his/her marriage subject to fulfilment of other prescribed conditions as hitherto fore."

13. On careful consideration of the above aspect of the matter with due application of mind, we fail to ignore the fact that it is a case of an individual, who is 40% disabled due to Locomotor disability as PPRP (Post Polio Residual Paraparesis) right lower limb with wasting and shorting with permanent disablement which has rendered him unable to survive on his own and earn a living even on attaining the age of 44 years. We also fail to ignore the fact that under proviso to AI 51/80, the applicant is, otherwise, eligible for grant of family pension. On the other hand,

the objections raised by the respondents, though important for the purposes of record and scrutiny, seem to be of technical nature only. We understand that it was mandatory on the part of the parents of the applicant to have declared the disability of their child during their life time as per the rules and regulations on the subject, but since applicant's parents have died, we cannot leave the handicapped applicant unattended. The applicant is son of an Army person and being a handicapped heir of the deceased soldier he has a right to livelihood. Even humanitarian grounds would compel us to consider the case sympathetically in the peculiar facts and circumstances of the present case.

14. During the course of hearing, learned counsel for the respondents raised two queries i.e. (i) disability certificate was issued on 16.12.2019 after death of parents and (ii) in the medical certificate it has not been mentioned that the applicant is unable to earn livelihood. In regard to first query we find that the old disability certificate was issued on 25.07.1997 i.e. prior to death of the parents and it is on record (page 31 of O.A.) and the new disability certificate dated 16.12.2019 was issued based on previous certificate. As far as his earning is concerned, learned counsel for the applicant has contended that applicant's income certificate dated 28.06.2020 was forwarded to respondent No. 3 stating therein that his monthly income is Rs 4,000/- per month. We find that the income certificate dated 28.06.2020 is on record and placed as Annexure A-17 which has been issued by

Competent Officer/Tehsildar, Bulandshahr in which applicant's annual income is Rs 48,000/- p.a. Therefore, keeping in view of applicant's medical disability @ 40% and his monthly income being Rs 4,000/- p.m. we are of the considered opinion that applicant is entitled to Ordinary Family Pension.

15. We, therefore, feel firm in taking the above view for the further reason that allowing a son or a daughter to be eligible for grant of Ordinary Family Pension for life in case of disability rendering them unable to earn a livelihood even after attaining the age of 44 years, the intention of the framers of the rules was to provide a humanitarian safeguard to a son or a daughter in conditions of extreme disability. Keeping in mind such an intention, our judicious conscience does not permit us to reject the claim of the applicant purely on the basis of the technical objections raised by the respondents which, otherwise, are factual and cannot be discarded out rightly. In any case, it would be a travesty of justice, totally unreasonable and unjustified on our part to reject the claim of the applicant and leave the applicant to suffer the adverse consequences of any inaction or mistake on the part of his parents to have failed to declare his disability during their life time. That in itself cannot disprove the fact that the applicant has remained disabled throughout his life and now it is vital factor of his survival. The applicant is suffering from disability "PARESIS" from childhood, but first disability certificate was issued on 25.07.1997 by Chief Medical Officer,

Bulandshahr which was later renewed on 16.12.2019 and 14.12.2000, hence applicant is eligible for grant of Ordinary Family Pension from the next date of death of his mother i.e. 10.11.2018. Impugned order dated 16.04.2022 passed by the respondents, rejecting his claim for grant of Ordinary Family Pension, is quashed.

16. Thus, in the result, Original Application succeeds and is **allowed** with directions to the respondents to grant Ordinary Family Pension to the applicant w.e.f. 10.11.2018 onwards till lifetime, and pay him the accrued arrears in this regard as per rules of the department within a period of four months after receipt of a certified copy of this order. However, due to law of limitation as held by the Hon'ble Supreme Court in the case of ***Shiv Dass vs. Union of India***, reported in 2007 (3) SLR 445, applicant is entitled to family pension w.e.f. three years preceding date of filing of this O.A. which was filed on 24.06.2022. Default will invite interest @ 8% p.a.

17. No order as to costs.

18. Miscellaneous application(s), pending if any, stand disposed of.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated :09.01.2023
rathore

(Justice Anil Kumar)
Member (J)