

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**ORIGINAL APPLICATION No. 879 of 2022**Friday, this the 13th day of January, 2023**“Hon’ble Mr. Justice Anil Kumar, Member (J)**
Hon’ble Maj Gen Sanjay Singh, Member (A)”Ashish Kumar S/o Late Kishan Lal, Ex-NK, No-14309053, R/O – Kila
Mohammdi Nagar, PO- Bhadrakh, Teh-Sarojini Nagar, Dist. - Lucknow
(UP).

..... Applicant

Ld. Counsel for the : **Shri Parijaat Belura**, Advocate
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, New Delhi.
2. Chief of the Army Staff, Army Headquarter Ministry of Defence,
Government of India, South Block New Delhi-110011.
3. Officer-in-Charge, Artillery Records, Nasik Road Camp, Nasik-
422102.
4. The Principal Controller of Defence Account (Pension), Draupadi
Ghat, Allahabad (UP).

.....Respondents

Ld. Counsel for the : **Ms. Amrita Chakraborty**, 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 following reliefs have been claimed:-

- (I) *To grant Family Pension W.e.f. 18.03.2021.*
- (II) *To pay difference of arrear of Family Pension alongwith 12% interest from 18.03.2021 till it is actually paid.*
- (III) *Any other suitable relief this Hon'ble Court deems fit and proper may also be granted.*

2. Brief facts giving rise to this application are that the applicant's father was enrolled in the Army on 23.11.1971 and he was discharged from service w.e.f. 31.12.1989 at his own request on extreme compassionate grounds under Rule 13 (3) III (iv) of Army Rules, 1954 after rendering 17 years, 05 months and 10 days service. After discharge from service he was granted service pension vide PPO No. S/058334/89 dated 28.12.1989. Applicant's mother Smt Bittu died on 05.12.2015 during life time of his father and his father also died on 17.03.2021. Earlier, applicant's sister Ms Neha Kumari whose date of birth is 23.09.1996 submitted a representation to Officer-in-Charge Records, Artillery, Nasik Road Camp on 25.01.2022 for grant of family pension but when nothing tangible could be achieved, her brother Ashish Kumar whose date of birth is 11.12.1999 has filed this O.A. for grant of family pension.

3. Learned counsel for the applicant submitted that father of the applicant was in receipt of service pension w.e.f. 01.01.1990. He further submitted that applicant's mother and father died on 05.12.2015 and 17.03.2021 respectively. It was further submitted that Ms Neha Kumari elder sister of the applicant had submitted a representation dated 25.01.2022 to Artillery Records for grant of family pension but till date

nothing has been heard from the respondents even after elapse of one year.

4. Learned counsel for the applicant further submitted that deceased soldier's children are not aware whether their names have been recorded in service records of the deceased soldier or not but they are entitled to grant of Ordinary Family Pension in terms of 69 (b) of Pension Regulations for the Army, 2008 (Part-I). He pleaded for grant of Ordinary Family Pension alongwith arrears to the applicant w.e.f. 18.03.2021 i.e. w.e.f. next date of death of his father.

5. On the other hand, learned counsel for the respondents submitted that applicant's father was in receipt of service pension vide PPO dated 28.12.1989. He further submitted that as per record of the deceased soldier, he was married to Bittu and had nominated her as next of kin (NOK), heir to estate, death-cum-retirement gratuity and family pension. It was further submitted that there is no entry in service record of the deceased soldier with regard to children being born out of the said wedlock.

6. Learned counsel for the respondents further submitted that Ms Neha Kumari, claiming herself as daughter of the deceased soldier had approached Artillery Records through her representation dated 25.01.2022 stating that her mother Smt Bittu and her father ex Nk Kishan Lal died on 05.12.2015 and 17.03.2021 respectively. In the said representation she also requested for notification of her and her brother's name i.e. master Ashish Kumar (the applicant) into service documents of the deceased soldier and thereafter, grant family pension in her favour. It was further submitted that she had supported her representation with death certificates of her parents. Further submission of learned counsel for the respondents

is that vide letter dated 07.02.2022 Miss Neha Kumari was advised to submit (i) birth certificate of both children issued by Registrar of birth/death, (ii) Educational certificate of both children mentioning therein names of parents and (iii) Photocopy of Adhar Card and PAN Card of both children duly verified by Zila Sainik Kalyan Evam punarvas Karyalaya, Sainik Bhawan, Kaiserbagh, Lucknow to enable the Artillery Records to notify the occurrence with regard to birth of children so that case could be taken up with PCDA (P), Allahabad for grant of Ordinary Family Pension.

7. Learned counsel for the respondents further submitted that applicant being younger brother of Miss Neha Kumari is not entitled to grant of Ordinary Family Pension as Para 68 (b) of Pension Regulations for the Army, 2008 (Part-I) clearly states that 'Ordinary Family Pension shall first be payable to the surviving spouse and in her absence or in the event of 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 become ineligible for the grant of Ordinary Family Pension'. The learned counsel conceded grant of Ordinary Family Pension to children of the deceased soldier.

7. Heard Shri Parijaat Belaura, learned counsel for the applicant and Mrs Amrita Chakraborty, learned counsel for the respondents and perused the record.

8. Applicant's father No. 14309053P late Nk Kishan Lal was enrolled in the Regiment of Artillery on 23.11.1971 and he was discharged from service w.e.f. 31.12.1989 (AN) at his own request before fulfilling the conditions of enrolment under Rule 13 (3) III (iv) of Army Rules, 1954.

After discharge he was granted service pension w.e.f. 01.01.1990 vide PPO dated 28.12.1989. The soldier's wife Smt Bittu, whose name is recorded in service documents as NOK, died on 05.12.2015 and the soldier died on 17.03.2021.

9. Miss Neha Kumari claiming herself to be daughter of the deceased soldier submitted a representation dated 25.01.2022 to Artillery Records, Nasik Road Camp for notification of her and her brother's name i.e. Ashish Kumar (the applicant) and for grant of Ordinary Family Pension. In response to her application, Artillery Records vide letter dated 07.02.2022 advised her to send following documents duly verified by Zila Sainik Kalyan Evam Punarvas Karyalaya, Sainik Bhawan, Kaiserbagh, Lucknow so that name of both the children could be notified in service documents of the deceased soldier:-

- (i) Birth Certificate of all children duly issued by Registrar of Birth/Death.
- (ii) Educational Certificate of all children duly mentioning name of parents.
- (iii) Photocopy of Adhar Card and PAN Card of all children.

10. From the aforesaid, it appears that during life time the deceased soldier did not submit necessary documents to Artillery Records for publication of Part-II Order with respect to birth of children and that is the only reason their names are not entered in service documents of the deceased soldier, otherwise after death of father and mother, eligible child/children would automatic have become eligible for grant of Ordinary Family Pension.

11. Para 68 of Pension Regulations for the Army, 2008 (Part-I) specifies that Ordinary Family Pension may be granted to eligible son/daughter after death of parents. For convenience sake, the aforesaid Para is reproduced as under:-

"68. (a) Except as provided in Regulation 71 below, the ordinary family pension shall not be payable to more than one member of the family at the same time. (b) The ordinary family pension shall first be payable to the surviving 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 elder above him becomes ineligible for the grant of ordinary family pension. (c) Where the ordinary family pension is payable to twin children, it shall be paid to such children in equal shares. Provided that when one such child ceases to be eligible, his share shall revert to the other child and when both of them cease to be eligible, the ordinary family pension shall be payable to the next eligible single child/twin children. (d) Ordinary family pension to unmarried daughter above 25 years of age, widowed/divorced daughter, shall be payable only after the other eligible children below the age of 25 years have ceased to be eligible to receive family pension and there is no disabled child to receive the family pension"

12. During the course of hearing, learned counsel for the applicant denied having received letter dated 07.02.2022 by which the requisite documents were asked duly verified by Zila Sainik Welfare Office, Kaiserbagh, Lucknow. In regard to this respondents are directed to provide copy of letter dated 07.02.2022 with all enclosures to enable the applicant to complete documentation for publication of Part-II Order by Non Effective Group (NE group) of the Records.

13. In view of the above, as a welfare measure to provide help to children of the deceased soldier, we direct the respondents to depute a person from the Regiment of Artillery for getting necessary documentation completed in liaison with Zila Sainik Welfare Office, Kaiserbagh, Lucknow within four months from the date of this order with regard to publication of Part-II Order

in respect of both the children and process claim for grant of Ordinary Family Pension to the applicant whose parents are no more.

14. With the aforesaid observation/direction, O.A. is disposed of. In case of further grievance, applicant shall have the liberty to approach the appropriate forum.

15. No order as to costs.

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

(Maj Gen Sanjay Singh)
Member (A)

(Justice Anil Kumar)
Member (J)

Dated : 13.01.2023