

RESERVED
Court No. 2

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

ORIGINAL APPLICATION No. 580 of 2023

Wednesday, this the 15th day of January, 2025

“Hon’ble Mr. Justice Anil Kumar, Member (J)
Hon’ble Vice Admiral Atul Kumar Jain, Member (A)”

Smt Chandrami Devi, mother of late Gnr (TLR) Satyendra Rajbhar, resident of Village-Indaur, Post Office-Indaur, Distt-Ghazipur (U.P.)-233226.

..... Applicant

Ld. Counsel for the: **Shri VP Pandey**, Advocate
 Applicant **Shri RK Singh**, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, Integrated Headquarters, Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Topkhana Abhilekh, Artillery Records, PIN-908802, C/o 56 APO.
4. Resettlement Officer Zila Sainik Welfare Officer, Ghazipur (U.P.).
5. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Prayagraj-211014.
6. Branch Manager, State Bank of India, Kasimabad, Ghazipur.
7. The Chief Manager, CPPC, State Bank of India, 4 Kutchery Road, Prayagraj (UP), PIN-211002.
8. Smt Jyoti Rajbhar W/o Pradip Bhardwaj, Vill & PO-Meerpur Rahimabad, Distt-Mau (U.P.).

.....Respondents

Ld. Counsel for the: **Ms Appoli Srivastava**, Advocate
 Central Govt Counsel for
 respondent No 1 to 5.
Mohd Zafar Khan, Advocate
 Counsel for respondent No 6 & 7.
Shri Rahul Pal, Advocate
 Counsel for respondent No 8.

ORDER

“Per Justice Anil Kumar, Member (J)”

1. By means of this OA filed under Section 14 of the Armed Forces Tribunal Act, 2007, the applicant has made the following prayers:

- “(i) To issue/pass an order or direction to the respondents for stoppage of Special Family Pension and pay the same to applicant since the date of re-marriage i.e. 20.06.2018.*
- “(ii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.*
- “(iii) Cost of the Original Application be awarded to the applicant.”*

2. In brief, the facts necessary for the purposes of adjudication of instant Original Application are given in the succeeding paras.

3. The applicant’s son late Gnr Satyendra Rajbhar (Army No. 15226882-A) was enrolled in the Army (Regiment of Artillery) on 29.09.2010. While posted with 66 Medium Regiment, he died on 02.02.2015 due to ‘Heart disease and its complication (likely Cardiomyopathy)’ at Military Hospital, Namkum. As per AFMSF-93 (Part-II), his death was regarded as ‘attributable to military service’.

4. During the course of his service, the deceased soldier had married Smt Jyoti Rajbhar (respondent No. 8) on 06.07.2014 and her name is recorded in the service documents as next of kin (NOK), heir to estate for family pension and death-cum-

retirement gratuity. No children were born out of the said wedlock. Consequent upon his death, being next of kin the competent pension sanctioning authority i.e. PCDA (P), Prayagraj released all entitled terminal benefits vide PPO dated 26.11.2015 in favour of Smt Jyoti Rajbhar (respondent No. 8), widow of the deceased soldier.

5. After death of Gnr Satyendra Rajbhar, in the year 2015, the applicant's husband Ex Nk Harish Chandra Ram submitted petition dated 21.03.2015 (Annexure A-4) intimating respondent No 3 that his daughter-in-law left the matrimonial house after cremation of the deceased soldier. He also requested the respondents to distribute death and pensionary benefits between the applicant and respondent No 8. The said petition was replied by respondent No. 3 vide communication dated 02.04.2015 (Annexure A-2) informing that process of payment of all terminal benefits had already been done in respect of widow of the deceased soldier as per nomination made by the deceased soldier during his life time. It was also intimated that the applicant was not dependent on the deceased soldier as her husband is in receipt of service pension from the Army. Thereafter, on 19.05.2022, 23.09.2022 and 24.01.2023 petitions were forwarded to various agencies by the applicant and her husband for grant of SFP. In response to petition dated 24.01.2023 submitted by the applicant, respondent No. 3 wrote letter dated 28.02.2023 (Annexure A-II) to respondent No. 4, advising respondent No. 8 to send updated Aadhar Card for record.

6. This O.A. has been filed for grant of SFP to the applicant on the ground that respondent No. 8 has re-married to Pradeep Bhardwaj on 20.06.2018 and she is not living with parents of the deceased soldier.

7. Learned counsel for the applicant submitted that applicant's son was enrolled in the Army on 29.09.2010 and died due to heart failure while in service on 02.02.2015. He further submitted that applicant's son died within six months of marriage with Jyoti Rajbhar (respondent No 8) who was issueless at the time of death. It was further submitted that respondent No. 8 is in receipt of SPF since 03.02.2015 including terminal benefits vide PPO No. F 0204382015.

8. Learned counsel for the applicant further submitted that since respondent No. 8 got re-married to Pradeep Bhjardwaj on 20.06.2018 (Annexure A-5), and shifted to her new house, she is not entitled to receive SFP as per Para 38.3 of notification placed at Annexure-6 to this O.A.. It was further submitted that the fact regarding re-marriage in respect of respondent No. 8 was brought to the notice of the competent authority vide application dated 30.09.2022 (Annexure-7), but no action was taken in this regard.

9. Learned counsel for the applicant further submitted that the respondents have not taken any action on petition dated 13.10.2022 (Annexure A-9) submitted by the applicant with respect to division of family pension between applicant and

respondent No 8. It was further submitted that respondent No. 8 is making misuse of Aadhar Card and address of her late husband which being illegal and amounting to criminal offence under CrPC, the applicant had represented the matter to respondent No. 4 vide his communication dated 28.02.2023 (Annexure-11), but no heed was given on the representation submitted by the applicant. In support of her contention regarding re-marriage of respondent No. 8 and she being living separately, the applicant had also submitted representation dated 09.02.2023 (Annexure-11) to the District Magistrate, Mau (U.P.) alongwith certificate of Village Panchayat. The learned counsel pleaded for grant of SFP to the applicant on the ground that respondent No. 8 has re-married with Pradeep Bharadwaj and is living separately.

10. Per contra, learned counsel for the respondents submitted that consequent to death of Gnr Satyendra Rajbhar on 02.02.2015, which being declared as attributable to/aggravated by military service, respondent No. 8 being NOK and childless widow of the deceased soldier, was provided entitled terminal benefits and Special Family Pension (SFP) w.e.f. 03.02.2015 vide PPO dated 26.11.2015. It was further submitted that on receipt of petition dated 09.09.2022 from the applicant with regard to grant of pension, suitable reply was forwarded intimating her that all terminal benefits have already been paid to widow of the deceased soldier as per nomination made by him

during life time, however, as per Para 130 (a) of Pension Regulations for the Army 2008 (Part-I), SFP is to be contributed proportionately towards support of other eligible heirs in the family who were dependent on the deceased soldier at the time death.

11. Learned counsel for the respondents further submitted that in reply to her second petition dated 23.09.2022, it was informed that respondent No. 8 is entitled to receive family pension even after re-marriage as per policy letter dated 12.11.2008 and PCDA Circular dated 11.07.2012 which entitles grant of family pension to childless widow of a deceased soldier even after re-marriage. It was also conveyed that she being dependent on her husband who is an Army pensioner is not entitled for grant of share of SFP which is being granted to respondent No 8. It was further submitted that the applicant was advised to submit joint income certificate duly signed by Revenue Officer for ascertaining the feasibility of division of SFP, which she failed to submit. The learned counsel for the respondents pleaded for dismissal of O.A. stating that applicant being wife of Army pensioner is not entitled to share of SFP and respondent No. 8 is eligible to receive full SFP as per Para 121 (b) (ii) of Pension Regulations for the Army, 2008 (Part-I).

12. Counter affidavit has been filed on behalf of the respondent No 6 and 7 (bank respondents) in which it is stated in para 6 that family pension in respect of respondent No 8 was

being paid as per PPO No. F/20438/2015 issued by respondent No. 5. It is also stated that w.e.f. 25.11.2022 family pension has been migrated to PCDA under Sparsh and as such they are not in position to answer whether pension in respect of respondent No 8 has been stopped. It is further submitted that w.e.f. 15.11.2019 the account has been transferred to State Bank of India, Dandi Chatti, P.O.-Kopaganj, District-Mau.

13. While filing counter affidavit on behalf of respondent No 8, the learned counsel submitted that applicant's husband is an ex-serviceman who is receiving service pension regularly, therefore, she is dependent on her husband. It is further submitted that in the circumstances she was not and should not be dependent in any way on the former husband of the respondent No 8. It is also submitted in Para 7 of the counter affidavit that Para 121 (b) (ii) of Pension Regulations for the Army, 2008 (Part-I) allows grant of family pension to a widow even after re-marriage. He pleaded for dismissal of O.A.

14. Heard learned counsel for the parties and perused the record.

15. It is not disputed that the applicant's son was enrolled in the Army on 29.09.2010 and died on 02.02.2015 while in service due to heart failure. After death, respondent No. 8, being NOK and childless widow of the deceased soldier, was granted SFP vide PPO No. F 0204382015 including terminal benefits.

16. Under the provision of Para 130 of Pension Regulations for the Army, 2008 (Part-I), Special Family Pension is divisible between eligible heirs according to financial status based on recommendations of respective authority subject to fulfilment of other conditions. In the present case, husband of the applicant, Ex Nk Harish Chandra Ram (father of the deceased soldier) is an ex-serviceman and is in receipt of service pension. Accordingly, the applicant is not meeting income criteria as her joint income exceeds the limit as mentioned in Govt of India, MoD letter dated 15.05.2012 circulated vide PCDA (P) Prayagraj, Circular No 484 dated 11.07.2012 which states that the parents of the deceased Armed forces personnel are entitled for family pension only after the childless widow dies or when income of the parents are equal to or less than Rs 3,500/- p.m. from all sources. This income criteria has now been revised to Rs 9,000/- in 7th CPC. For convenience sake Para 2 of the above circular, being relevant, is reproduced as under:-

“2. It has been clarified by GOI, MOD that in the cases deceased Armed forces Personnel is not survived by a widow/widower or child, the dependent parents become directly eligible to receive family pension. In case where a deceased Armed forces personnel is survived by a widow/widower or child and position changes subsequently because of death or remarriage of the spouse and / or death or ineligibility of child / children including disabled child, the dependent parents become eligible for family pension. However, in terms of this Ministry's letter No: 17(4)/2008(2)/D (Pen/Pol) dated 12.11.2008, a childless widow subject to dependency criteria is entitled to the family pension even after remarriage. In such an event, the parents of the deceased Armed Force Personnel become entitled to the Family Pension only after the childless widow dies or when her independent income from all sources becomes equal to or higher than prescribed dependency criteria under the rule.”

17. Re-marriage by the widow is no more a disqualification to continue to receive pension in view of MoD letter dated 12.11.2008 in case of death in harness after 01.01.2006. This issue was also upheld in dismissal of O.A. No. 891 of 2011 by AFT (PB), New Delhi on 12.07.2011 in the case of ***Chandrapati & Anr vs Union of India***, filed by the parents of the deceased.

18. In the given facts and circumstances of the case, the applicant would have been entitled to share of SFP if her husband was not in receipt of the service pension. In view of the fact that the applicant's husband is an Army pensioner and his total income being more than Rs 9,000/- p.m., the applicant does not seem to be entitled to the share of Special Family Pension.

19. The O.A. is devoid of merit and is accordingly **dismissed**.

20. No order as to costs.

21. Miscellaneous application(s), pending if any, stand disposed off.

(Vice Admiral Atul Kumar Jain)
Member (A)

Dated: 15.01.2025
rathore

(Justice Anil Kumar)
Member (J)

RESERVED
Court No 2

Form No. 4

{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW

O.A. No. 580 of 2023

Smt Chandrami Devi

Applicant

By Legal Practitioner for the Applicant

Versus

Union of India & Ors

Respondents

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<div><div><u>15.01.2025</u> <u>Hon’ble Mr. Justice Anil Kumar, Member (J)</u> <u>Hon’ble Vice Admiral Atul Kumar Jain, Member (A)</u></div><div>Judgment pronounced. O. A. No. 580 of 2023 is dismissed. For orders, see our judgment and order passed on separate sheets.</div><div><div>(Vice Admiral Atul Kumar Jain) Member (A) <i>rathore</i></div><div>(Justice Anil Kumar) Member (J)</div></div></div>