

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No. 2

O.A. No. 185 of 2015

Wednesday, this the 5th day of Oct, 2016

"Hon'ble Mr. Justice D.P.Singh, Judicial Member
Hon'ble Air Marshal Anil Chopra, Administrative Member"

Raj Kumari, wife of second husband Rajendra Kumar and
wife of first husband late Ex L/NK (MP) Ashok Kumar Singh
resident of village Samas P-ur Post, Lalpur Distt Fatehpur
(U.P.)**Applicant**

Versus

1. Union of India through Secretary Ministry of Defence
(Army) South Block, New Delhi 110010.
2. Chief of the Army Staff, IHQ, MoD (Army) South
Block New Delhi.
3. Senior Record Officer Corps of Military Police Record
Pin-900493.
4. PCDA (Pension), Draupadi Ghat,
Allahabad.....**Respondents**

**Ld. Counsel appeared for the
Petitioner**

**- Shri P.K.Shukla,
Advocate**

**Ld. Counsel appeared -
for the respondents**

**Dr. Shailendra Sharma Atal,
Central Govt Standing Counsel**

Order (Oral)

1. Present O.A has been preferred under section 14 of the Armed Forces Tribunal Act assailing the orders dated 28.06.2011 and 02.03.2013 attended with the prayer to issue appropriate order or direction to issue Ordinary Family Pension for the period from 19.07.1981 to 01.01.2006 to the Applicant.

2. The facts of the case in nut-shell are that Late Shri Ashok Kumar Singh, the first husband of the Applicant, was enrolled in the Indian Army on 10.04.1976 but breathed his last during active service on 05.07.1978. As a result of death of her first husband, the Applicant was sanctioned family pension which was paid to her with effect from 06.07.1978. However, the same was ceased to be paid with effect from 18.07.1981 on the ground that the Applicant had contracted re-marriage.

3. The case of the Applicant is that the family pension was illegally stopped as the Applicant had contracted re-marriage with the real brother of her deceased husband namely, Rajendra Kumar Singh. It is alleged that being aggrieved by the stoppage of family pension, she represented her case to the

authorities concerned ad nauseam but the same elicited no response. It is further alleged that it was by letter dated 28th June 2011 that she was informed that she was not entitled to family pension on account of her re-marriage and in this connection, reference was made to the Government order dated 1st April 2011. It is in the above backdrop that the present O.A was filed.

4. **Per contra**, learned counsel for the respondents drew our attention to Government order dated 1st April 2011, a copy of which has been annexed as Annexure SA 4 to the Supplementary affidavit, which, according to plain reading envisages that the childless widow of a deceased Central Government employee who had expired before 01.01.2006 shall be eligible for family pension in the light of 6th C.P.C's recommendations irrespective of the fact that the remarriage of the widow had taken place prior to /on or after 1.1.2006. Citing the above Government order, it has been argued that the Applicant has been provided the financial benefits of family pension from 01.01.2006.

5. The Para 4 of the Government order dated 1st April 2011 being relevant is reproduced below.

"The issue has been examined in this Department in consultation with Department of Expenditure. It is hereby

clarified that the childless widow of a deceased Central Government employee who had expired before 1.1.2006, shall be eligible for family pension in the light of 6th CPC's recommendations irrespective of the fact that the remarriage of the widow had taken place prior to/on or after 1.1.2006. The financial benefits in such cases, however, will accrue from 1.1.2006. This, however, would be subject to the fulfilment of certain conditions laid down therein, including the income criterion that the income of the widow from all sources does not become equal to or higher than the minimum prescribed for family pension in the Central Government."

6. In repudiation, learned counsel for the Applicant invited our attention to Regulation 219 of the Pension Regulations for the Army (1961), the crux of which is that the remarriage of the widow will constitute a disqualification but this condition shall, however, not apply to a widow who remarried with the real brother of her deceased husband and continues to live a communal life with and/or contributes to the support of other living eligible heir. Regulation 219 being relevant is reproduced below.

"219. A relative specified in Regulation 216 shall be eligible for 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 (but see Regulation 222).*
- (iii) *Widow, lawfully married/judicially separated wife, such separation not being granted on the ground of adultery and the person surviving was not held guilty of committing adultery.*

Remarriage of the widow will constitute a disqualification but this condition shall, however, not apply to a widow who remarried with the real brother of her deceased husband and continues to live a communal life with and/or contributes to the support of other living eligible heir."

7. Regard being had to the aforesaid Army Regulation, there appears to be no room for doubt that the Applicant was entitled for family pension inspite of her re-marriage with the real brother of the deceased husband/Army Personnel and payment of family pension was illegally discontinued in utter disregard of Regulation 219 of the Pension Regulations 1961. To rephrase it, the provisions contained in Regulation 219 of the Pension Regulations for the Army , 1961 would

have primacy over the office memorandum as contained in the Government order dated 1st July 2011. The Government order relied upon by learned counsel for the respondents dated 1st July 2011 will have no binding effect vis a vis the Regulation 219 of the Pension Regulations for the Army 1961 which shall have a binding effect till it survives, subsists and not amended accordingly.

8. As a result of foregoing discussions, we are of the view that the Applicant shall be entitled to family pension with effect from 19.07.1981 on the date on which it ceased to be paid to her till 31 Dec 2005.

9. In the above conspectus, the O.A deserves to be allowed and is accordingly allowed. The impugned orders dated 28.06.2011 and 02.03.2013 are set aside and the respondents are directed to grant pension to the Applicant with effect from 19.07.1981 onwards with all consequential benefits till 31st Dec 2005 accrued with interest payable at the rate of 10% per annum. Needless to say, the arrears of pension shall be paid to the Applicant within a period not exceeding four months from the date of communication of the present order.

10. At this stage, an oral prayer has been made for grant of leave to appeal. We have considered the plea

in all its pros and cons and we are of the view that no question of public importance is involved to grant leave to appeal. In view of statutory provision contained in Section 31 of the Armed Forces Tribunal Act, 2007, we also find that no point of law of general importance is involved, which may call for grant of leave to appeal to the applicant.

Accordingly, the oral prayer lacks merit and is rejected.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Date: October, 05th, 2016.

MH/-