

Court No. 1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****Original Application No. 508 of 2019**

Wednesday, this the 29th day of September, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Smt Kalinder Devi alias Kalindi Devi, Wife of Late Sugreev Singh, Resident of Village- Gohda, Bishunpura, Distt- Ghazipur.

Counsel for the Applicant : **Shri Manoj Kumar Singh,
Advocate**

Versus

1. Union of India through its Secretary, Ministry of Defence, New Delhi.
2. Office of the PCDA (P), Draupadi Ghat, Allahabad.
3. Senior Record Officer, Rajput Regiment Record Office, C/o 56 APO, Fatehpur.
4. Senior Treasury Officer, Ghazipur.
5. District Zila Sainik Kalyan Karyalaya, Ghazipur.

.....Respondents

Counsel for the Respondents : **Ms. Anju Singh,
Central Govt. Counsel**

ORDER

“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”

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). Issue an order or directions in the nature of directions by which the opposite parties may be directed to pay the family pension to the petitioner to survive in the life after the death of the Sugreev Singh.

(ii) Issue a directions to the respondents to pay the decent compensation to the applicant in view of the harassment caused to him by the respondents by not paying the family pension despite of the establishing the proof of the marriage with the deceased.

(iii) Issue any other order or directions which this Hon’ble Tribunal may deem fit just and proper in the circumstances of the case be also awarded to the petitioner against the opposite parties.

(iv) To award the cost of this petition to the petitioner against the opposite parties.

2. The factual matrix of the case is that husband of the Applicant Army No 2961533, Ex Hav Late Sugreev Singh was enrolled in the Indian Army on 04.01.1966 and was discharged from service on 23.08.1983. Husband of the Applicant was sanctioned pension vide PPO No S/C/23097/83 for the service rendered in the army. Husband of the applicant joined State

Bank of India on 02.06.1987. Husband of the applicant was embroiled in a criminal case. FIR was lodged against him in case Crime No 97 of 1997 V/s 302, 34 of IPC and husband of the applicant was convicted in Sessions Trial No 280 of 1997. After few months of conviction, pension of the husband of the applicant was stopped and later on after moving the application by applicant's husband, his pension continued by the army authorities and till death he was getting pension regularly. The husband of the applicant died on 07.06.2017. After death of her husband, applicant sent representation for grant of family pension but the same was denied to her. Being aggrieved, applicant has filed instant Original Application for grant of family pension from the next date of death of her husband.

3. Learned counsel for the applicant submitted that husband of the Applicant Army No 2961533, Ex Hav Late Sugreev Singh was enrolled in the Indian Army on 04.01.1966 and was discharged from service on 23.08.1983 under Rule 13 (3) Item III (iv) of the Army Rules, 1954 before fulfilling the terms and conditions of enrolment on compassionate grounds on his own request. After retirement from army, husband of the Applicant was sanctioned pension vide PPO No S/C/23097/83. Husband of the applicant joined service in

State Bank of India on 02.06.1987. Husband of the applicant was embroiled in a criminal case which culminated in his conviction in the year 1997. FIR was lodged in case Crime No 97 of 1997 V/s 302, 34 of IPC. Husband of the applicant was convicted in Sessions Trial No 280 of 1997 by Court of 2nd Additional Session Judge, Ghazipur vide order dated 10.08.2001. Husband of the applicant filed appeal No 2745/2001 against order dated 10.08.2001. Husband of the applicant was released on bail in Appeal No 2745/2001 vide order dated 30.08.2001. Execution of sentence was suspended. After few months of conviction, pension of the husband of the applicant was stopped and later on after moving the application by applicant's husband, his pension continued by the army authorities and till death he was getting pension regularly. The husband of the applicant died on 07.06.2017. After death of her husband, applicant represented her case for grant of family pension being the widow of deceased soldier and furnished required documents but family pension was denied to her. Learned counsel for the applicant prayed that since husband of the applicant was on bail in appeal in murder case and service pension was granted to

him, respondents be directed to grant family pension to the applicant.

4. Per contra, learned counsel for the respondents submitted that husband of the applicant was implicated in a murder case on 04.08.1997 under Section 302 IPC and he was further released on bail by Sessions Judge Ghazipur vide order dated 12.09.1997. Accordingly his pension was suspended. Subsequent to release on bail, husband of the applicant approached respondents for restoration of his pension and his pension was restored. After death of deceased soldier, applicant approached respondents for grant of family pension, supported with death certificate of her husband Ex Hav Sugreev Singh who died on 07.06.2017. On receipt of documents from the applicant Records Rajput Regiment checked documents in detail and observed that as per life time arrear certificate, issued by Senior Treasury Officer, Ghazipur, Ex Hav Sugreev Singh had regularly been paid service pension till his death i.e. 07.06.2017 even after his conviction by the Hon'ble Criminal Court and award of life imprisonment which he was not entitled for. Senior Treasury Officer, Ghazipur vide letter dated 08.09.2018 intimated Records Rajput Regiment that Ex Late Hav Sugreev Singh

was in continuous receipt of service pension from the date of discharge from army till his death i.e. 07.06.2017 and they were not aware of the fact of conviction of the deceased soldier. Though Ex Late Hav Sugreev Singh had filed Criminal Appeal In Hon'ble High Court Allahabad but Hon'ble High Court Allahabad had not acquitted him of the charges. Consequent to his conviction and award of life imprisonment, his pension was liable to discontinued by his Pension Disbursing Agency i.e. Treasury Office, Ghazipur in accordance with para 29.1 of PPI revised 1973. Accordingly, Records Rajput Regiment requested Senior Treasury Officer, Ghazipur to intimate authority for restoration of service pension of Ex Late Hav Sugreev Singh. In the meantime, applicant filed Writ Petition No 16042/2018 against Union of India and others before Hon'ble High Court Allahabad. The Writ Petition was disposed of vide order dated 01.08.2018 with directions to the applicant to approach respondents for grant of family pension within a period of two months but the applicant had not submitted her representation.

5. Learned counsel for the respondents further submitted that husband of the applicant had concealed the fact of his conviction under Section 302 of IPC by the Hon'ble Criminal

Court and award of life imprisonment from Pension Disbursing Agency. Thus, he drew his pension in a fraudulent way even after having been convicted. In the instant case, husband of the applicant died as convicted and at time of death he was not entitled for service pension under the provisions as mentioned here in above, as his service pension was subject to be discontinued by his Pension Disbursing Agency i.e. Treasury Office, Ghazipur immediate after his conviction in the murder case. Ex Late Hav Sugreev Singh was not liable to receive any pension, accordingly family pension to the applicant was denied. Learned counsel for the respondents submitted that the applicant in her Original Application has nowhere mentioned that her husband was convicted in murder case and dismissed from Bank service, hence she has not come in the Tribunal with clean hands. Learned counsel for the respondents pleaded that Original Application is misconceived and devoid of merits as such liable to be dismissed.

6. We have heard learned counsel for the parties and perused the documents available on record.

7. There is no dispute about the stoppage of pension on being imprisoned on conviction. The issue that requires to be adjudicated is, whether applicant is entitled to family pension after death of her husband under the pension Regulations, 1961.

8. The applicant has had an exemplary 16 years of service record in the Indian Army with no punishment on record. The provisions for restoration of pension are very clear.

9. Learned counsel for the applicant rebutted the contention of respondents and invited our attention to the final order and judgment of the Armed Forces Tribunal, (Regional Bench) Lucknow in **O.A. No. 26 of 2015, Satyapal Singh vs. Union of India & Others**, decided on 21.07.2016 and Armed Forces Tribunal (Regional Bench), Chandigarh judgment rendered in **O.A. No.159 of 2013, Chandra Singh vs. Union of India**, decided on 10.09.2013. The relevant portion of the judgment of AFT, Chandigarh in the case of **Chandra Singh** (Supra) is reproduced below for ready reference :-

“It is again surprising that in spite of letter and legal notice from the petitioner, the respondents, instead of restoring the pension of the petitioner, have tried to justify the stoppage of pension on the ground that the outcome of the exercise at the end of the respondents would be the suspension of the pension of the petitioner as he has yet not been acquitted by the Court. We

deplore and depreciate this attitude of the respondents. Instead of doing justice to the petitioner they are adamant to add insult to the injury.

Learned counsel for the respondents has taken shelter of the provisions of Para 82 (d) of the Pension Regulations for the Army, 1961 (Part II) to argue that as per this provision if a pensioner is convicted and sentenced for a criminal offence by the Court below and then is acquitted by the Higher Court the pension withheld shall be restored. We may mention here that this Para 82(d) has been submitted by the respondents as Annexure R-3 but the whole of the regulation 82 has not been reproduced for some ulterior motive. Clauses (a) and (b) of the said regulation 82 which have been concealed by the respondents are very material and we reproduce them as under:

“82 (a) If a pensioner is sentenced to imprisonment for a criminal offence, his pension shall be suspended from the date of his imprisonment and the case will be reported to the Controller of Defence Accounts (Pension), Allahabad for the orders of the competent authority. In case, where a pensioner is kept in police or jail custody as an under-trial prisoner and is eventually sentenced to a term of imprisonment for a criminal offence, the suspension of pension shall take effect from the date of imprisonment only.

82 (b) Restoration of Pension withheld – A pension withheld in whole or in part may be restored in full or in part by the competent authority in consultation with the State Government or Administration concerned in political cases and with the Controller of Defence Accounts (Pensions) and the civil authorities, if necessary, in other cases. In the case of a pensioner undergoing imprisonment, any action under this Regulation shall only be taken on his application after

release but in no case, shall pension be sanctioned for the period of imprisonment in jail for a serious crime.

Learned counsel for the respondents tried to argue that it is only upon the acquittal of the petitioner that his pension can be restored.

Although the petition is entitled to be allowed simply on the ground that neither show cause notice was issued to the petitioner nor order in writing was passed by the competent authority for the suspension of the pension of the petitioner yet a conjoint reading of Para 82(a) and 82(b) makes it abundantly clear that the pension during the period of imprisonment will not be payable. However, the pension may be restored after the release of the pensioner from custody. The word used in the Regulation is 'Release' and not 'Acquittal'. These are two entirely different words having different meanings. One cannot be equated with other. If the word 'Release' is equated with the word 'Acquittal' then it would mean that if the hearing in the appeal does not take place for 20 years, the petitioner will not get the pension for 20 years till his acquittal. That cannot be the intention of the framers of the Regulations. Word 'Release' has consciously been used in Para 82(b) which means if a person is released on bail, his pension should be restored. Para 82(d) deals with a different situation which we need not elaborate in this case.

In view of the entire discussion we are satisfied that the pension of the petitioner has wrongly been withheld and is liable to be restored.

Looking at the gross negligence and stubborn attitude of the respondents we also intend to impose cost.

The petition is allowed with cost of Rs. 10,000/- to be paid by the respondents No. 1 to 3. The action stopping the pension of the petitioner is set aside. The pension of the petitioner be restored with effect from 01.09.2009. The petitioner will be paid the arrears with interest at the rate of 8% per annum with effect from 01.09.2009 till the arrears are paid.

The respondents are at liberty to take further action, if any, as per the Rules.”

10. Keeping in view the aforesaid observations made by the Armed Forces Tribunal, Regional Bench, Chandigarh, the question with regard to payment of pension during pendency of Criminal Appeal seems to be no more res integra. The Tribunal has decided that the word 'Release' used in Para 82 (b) of the Regulations has been consciously used which means if a person is released on any ground whether on bail or after due acquittal in a criminal case, his pension should be restored. The Bench further held that Para 82(d) deals with a different situation which we need not to elaborate in this case. The interpretation given by the Armed Forces Tribunal Chandigarh does not seem to have been modified or annulled by any higher forum and therefore, it has the binding effect. In the circumstances, we have no option except to allow the present Application. Admittedly, husband of the applicant was granted bail in Criminal Appeal and he was released from jail. Since, husband of the applicant was released on bail and he was granted pension till his life time, applicant seems to be entitled for restoration of pension, in view of law settled by the Chandigarh Bench.

11. Accordingly, the O.A is **allowed**. Any decision or order passed with regard to stoppage of pension to the applicant is set aside. The respondents shall grant family pension to the applicant from the next date of death of her husband with immediate effect .

12. Let necessary exercise be done in compliance with this order by the respondents within a period of three months from today. Default will invite interest @ 8% p.a.

13. No order as to costs.

14. Pending applications, if any, stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated: 29 September, 2021
Ukt/-

(Justice Umesh Chandra Srivastava)
Member (J)