

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No. 223 of 2020****Monday, this the 13th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Sarita Nair W/O second husband No JC-696243-X Sub Sukumaran Nair
V S/O N. Vasudevan Pillai and widow of first husband No 13946745H
Ex Nk (ORA) late Ramachandran Nair V, Resident of House No.
581/32, Vill-Chillawa, P.O.-Amousi Airport, Kanpur Road, Lucknow,
U.P.-226009.

.... Applicant

Ld. Counsel for the: **Shri Pankaj Kumar Shukla**, Advocate.
Applicant

Versus

1. Union of India, through the Secretary, Ministry of Defence, 101 South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. The Officer-in-Charge, Sena Chikitsa Corps Abhilekh Karyalaya, Army Medical Corps Record Office, PIN: 900450, C/O 56 APO.
4. PCDA (Pension), Draupadi Ghat, Allahabad.

... Respondents

Ld. Counsel for the **Shri Amit Jaiswal**, Advocate
Respondents. Govt Standing Counsel

ORDER (Oral)

1. The instant Original Application has been filed on behalf of the applicants under Section 14 of the Armed Forces Tribunal Act, 2007, whereby the applicants have sought following reliefs:-

(a) To issue/pass an order or direction to set aside/quash the Rejection order No 13946745/Pen/FP/Gen/2020 dated 10.07.2020, letter/order No G4/VII/PFC-12470/2020 dated 22.06.2020 and order No 13946745/Pen/FP/2019 dated 27.12.2019 passed by respondents.

(b) To issue/pass an order or direction to the respondents to restore the applicant's Ordinary Family Pension from dated 16.05.2015 along with @ 12% interest on arrear in light of Hon'ble Court/Tribunal judgments.

(c) To issue/pass any other order or direction as this Hon'ble Tribunal may deem just, fit and proper under the circumstances of the case in favour of the applicant.

(d) To allow this original application with costs.

2. Brief facts of the case are that No 13946745-H Ex Nk Ramchandran while on active service died in 154 General Hospital on 29.08.1990 due to 'Acute Myocardial Infarction'. While in service he married to Ms Sarita Nair on 26.06.1988 and occurrence to this effect was notified vide Part II Order No. 0/0175/044/1988. Thus, Smt Sarita Nair being legally wedded wife of the deceased soldier became entitled to receive family pension in terms of Para 216 of Pension Regulations for the Army, 1961 (Part-I). Accordingly, she was granted enhanced rate of family pension for the period from 30.08.1990 to 29.08.1997 and thereafter, Ordinary Family Pension w.e.f. 30.08.1997 onwards vide PPO No. F/NA/2385/1991 dated 04.05.1991. As per Sheet Roll in respect of the deceased soldier Smt Sarita Nair (DOB-17.08.1968) and Master Rohit R (DOB-16.05.1990) are dependent family members of the deceased soldier.

3. After death of the Army person, applicant got married with JC-696243X Ex Sub Sukumaran Nair V on 30.12.1991 and occurrence to this effect was notified vide Military Hospital Golconda Part II Order No 0/0023/0042/1992. After re-marriage, applicant's family pension was stopped and same was granted to Mr. Rohit R Nair (son of deceased soldier) w.e.f. 31.12.1991 till attaining the age of 25 years vide PPO No. F/NA/4379/1992 dated 21.09.1992 (Annexure A-9 to O.A.). Applicant has submitted an application dated 10.09.2019 for restoration of Ordinary Family Pension but it was denied by PCDA (P), Allahabad stating that only childless widow is entitled to Ordinary Family Pension even after her re-marriage as per Circular No. 479 dated 17.02.2012. This O.A. has been filed for restoration of Ordinary Family Pension to applicant.

4. Submission of learned counsel for the applicant is that applicant after death of her husband was granted family pension w.e.f. 30.08.1990 vide PPO No F/NA/2385/91 dated 14.05.1991. After getting re-married with Sub Sukumaran on 30.12.1991 applicant's family pension was stopped and granted to her son Rohit R Nair vide PPO No. F/NA/4379/1992. On attaining age of 25 years, her son's family pension was stopped w.e.f. 16.05.2015. Further submission of learned counsel for the applicant is that a representation was submitted to respondent No 3 for restoration of family pension but it was denied vide letter dated 22.06.2020 stating that "As per circular No 479 dated 17.02.2012, only childless widow is entitled to ordinary family pension even after re-marriage." His contention is that no general order has been issued for restoration of Ordinary Family Pension to widow having

child till date. Applicant's learned counsel further submitted that in symmetrical O.A. No. 2822 of 2016, **Renu Gupta vs Union of India & Ors**, Central Administrative Tribunal, Principal Bench, New Delhi has held as under:-

".....Since the applicant is legally entitled for family pension under CCS (Pension) Rules, 1972, there seems no legal bar in retransferring the pension in her name....."

5. Learned counsel for the applicant has further relied upon O.A. No. 316 of 2012 decided by AFT, Chandigarh on 12.03.2014 in the case of **Smt Gurdip Kaur vs Union of India & Ors**, which held as under:-

"20. In view of the above we hold that the petitioner is entitled to ordinary family pension from 06.01.1999 when the marriage of Kumari Jinni took place....."

6. Learned counsel for the applicant has further relied upon order dated 19.08.2008, passed in Writ Petition (Civil) No. 1082 of 1995 by Hon'ble Delhi High Court in the case of **Smt Kashmiro Devi vs Union of India & Ors**, which held as under:-

"The proposal that on marriage of such a widow, the pension should cease cannot be quarrelled with because her dependency is gone and she goes into another family where she is maintained by the current husband. The respondents were, however, conscious of the fact that there was local customs prevalent where often 'Chadar' was put by the brother of the deceased person so that the widow remains within the family and is provided support and succour. Thus, to encourage and provide for family support to such a widow that an exception has been carved out under Regulation 219 that even if a widow remarries and the marriage is with the brother of the deceased husband, the pension would not be terminated. There can be no distinction made between a widow of a person who has died by reasons attributable to or aggravated by military service and a person who has died just in service since the problems faced by the widows are identical. The difference in the cause of the death, however, has resulted in difference in the value of the pension."

7. Further reliance was made by learned counsel for the applicant in the case of **Kiran Kumar vs State of Haryana & Ors**, 2004 (2) SLR 694 in which Hon'ble High Court of Punjab & Haryana has held as under:-

“Firstly, there is no rule which prohibits grant of family pension to the widow of the deceased who has remarried and particularly in the same family. The object of the rule is not to deny benefit of family pension to the dependent of the deceased, but, obviously provides an exception to that concept by postulating a situation where the widow remarried independently and her economic dependence upon the deceased is disintegrated, from the need of the family. In the present case, both such situations exist. Admittedly, the daughter of the deceased is living with the petitioner, who has remarried with the younger brother of the deceased. The economic dependence of the family, thus continues in its entirety and ingredient of an exception.

Furthermore, we may refer to judgment of this Court in the case of Kamaljit Kaur vs Union of India and others, 1997 (3) PLR 441, wherein the Court while dealing with the Regulation 216 and 219 of the Service Pension and Gratuity Regulations in somewhat similar circumstances granted relief to the petitioner and held as under:-

“Petitioner, widow of Malkit Singh, married with the brother of the deceased. This fact is admitted in the written statement. In such a situation, the relevant Rule that applies to the case in hand is Rule 219 of Section II of ‘Service Pension and Gratuity’. That Rule states that a relative specified in Regulation 216 shall be eligible for the grant of family pension. Widow is one mentioned in Regulation 216. Thus, it is beyond controversy that widow is entitled to pension under Rule 219. That Rule further states that if the widow re-marries her deceased husband’s brother and continues to live a common life with and/or contributes to the support of the other living eligible heirs she continues to be entitled to family pension. In this case petitioner re-married deceased’s direct brother. She is maintaining the son born to her through the deceased, thus, petitioner continues to have a right to get the family pension. That family pension was denied to her from May, 1994. The said action on the part of the respondents was illegal. So, respondents are directed to pay the entire arrears of pension due to the petitioner within a month from today. If the entire arrears are not paid within one month, as stated above, that entire arrears will carry interest at the rate of 12% per annum from the date of expiry of one month till the date of actual payment. We direct the respondents to continue to disburse the family pension due to petitioner regularly month by month. Petition is allowed as indicated above. Since respondents have raised all cantankerous contentions in the written statement filed in this case, we feel that it is a fit case where they are to be mulcted with costs. Respondents are directed to pay the costs of the petition including Advocate’s fee of Rs 2,000/-.”

8. Learned counsel for the applicant has also placed reliance on para 9 to 12 of CAT, Principal Bench, New Delhi judgment dated 10.09.2018

delivered in the case of **Renu Gupta vs Union of India & Ors**, O.A. No. 2822 of 2016 and reproduced relevant paras as under:-

“9. However, regarding grant of family pension, transferred to her son in the year, 2002, I find that there is no dispute that (childless) widow of a deceased government servant, is eligible for family pension even if she remarries. I do not agree with the contention of learned counsel for respondents. Principally, it has been held by the Government that even in the case of re-marriage of widow, family pension can be given.

10. The applicant in the O.A. was sanctioned family pension as per her entitlement. Without understanding the consequences, she requested for transfer of the family pension in the name of her son after her re-marriage. However, the said family pension will become inadmissible after the son attains the age of 25 years. This fact is also mentioned by the respondents in their letter dated 17.05.2013.

11. Since the applicant is legally entitled for family pension under CCS (Pension) Rules, 1972, there seems no legal bar in re-transferring the pension in her name. The NOC from her son, current recipient of the family pension, is also reportedly available.

12. In view of these facts, the respondents are directed to restore the family pension of the applicant in her name, prospectively. The rejection orders dated 26.10.2015, 05.10.2015, 27.03.2015 and 25.09.2014 are set aside. The respondents are directed to transfer the claim of the applicant for transfer of family pension to herself from her son, within a span of four months from the date of receipt of a certified copy of this order. No costs.”

9. On the other hand learned counsel for the respondents submitted that in view of PCDA (P), Allahabad Circular No 479 dated 17.02.2012 applicant is not entitled for restoration of Ordinary Family Pension. He has quoted the aforesaid circular as under:-

“Consequent on the issue of the GOI, MOD letter No. 1(6)/2011-D(Pen-Policy), New Delhi, the 06th January, 2011 and it's corrigendum letter No. even dated 17th January, 2012 (Copies enclosed), the scheme of Ordinary Family Pension has been modified. Now, childless widow is entitled to Ordinary Family Pension even after her re-marriage. The childless widow of a deceased employee who expired before 01.01.2006 shall also be eligible for family pension irrespective of the fact that the remarriage of the widow had taken place prior to/ on or after 01.01.2006 subject to fulfilment of conditions prescribed in Para-11.3 of GOI, MOD letter dated 12.11.2008 and other conditions. 2. In terms of Para-11.3 of GOI, MOD letter No. 17(4)/2008(2)/D(Pen/Policy) dated 12.11 2008, the childless widow of a deceased Armed Forces Personnel shall continue to

be paid family pension even after her re-marriage subject to the condition that the family pension shall cease once her independent income from all other sources becomes equal to or higher than the minimum prescribed family pension in the Central Government. The family pensioner in such cases would be required to give a declaration regarding her income from other sources to the Pension Disbursing Authority every six months.”

10. We have heard learned counsel for the parties and scrutinized material placed on record.

11. This is a case where an Army widow Smt Sarita Nair was in receipt of enhanced rate of Ordinary Family Pension vide PPO No. F/NA/2385/1991 dated 04.05.1991. Applicant was having a minor son named Rohit R Nair when she re-married to Sub Sukumaran Nair V on 30.12.1991. On her re-remarriage, family pension was transferred in the name of son to be paid w.e.f. 31.12.1991 vide PPO No. F/NA/4379/1992 dated 21.09.1992. On attaining age of 25 years, her son's family pension was stopped. Thereafter, applicant submitted an application dated 10.09.2019 for restoration of Ordinary Family Pension to PCDA (P), Allahabad which was returned stating that “only childless widow is entitled to ordinary family pension even after her re-marriage as per circular No. 479 dated 17.02.2012.”

12. In this regard we have referred Rule 216 of Pension Regulations for the Army, 1961 (Part-I) with respect to eligibility of payment of family pension which reads as under:-

“216. The following members of the family of a deceased individual shall be viewed as eligible for the grant of a special family pension, provided that they are otherwise qualified: -

(a) widow/widower lawfully married. It includes a widow who was married after individuals' release/retirement/discharge/invalidment.

(b) Son actual and legitimate/including validly adopted.

(c) Daughter, actual and legitimate/ (including validly adopted).

- (d) Father.
- (e) Mother.
- (f) Brother
- (g) Sister

Note 1-The term “widow” used in the above or any other regulation in this sub-section in respect of special family pensionary awards shall be deemed to include such a widow who was married after the individual's discharge/invalidment.

Note 2 -The term “child” used in the above or any other regulation in this sub-section in respect of special family pensionary awards shall be deemed to include such a child born out of a marriage after discharged/invalidment of the individual.

Note 3 -The term “father” and “mother” or “parents” used in the above or any other rule in this sub-section shall also be deemed to include such putative parents (or surviving parents as the case may be) as had not contracted a lawful marriage, but were living as husband and wife at the time of, or got lawfully married subsequent to, the conception of deceased member of the forces.”

13. The Govt of India, Ministry of Defence vide policy letter dated 06.01.2011 issued following guidelines:-

“Consequent upon receipt of certain references from various quarters seeking clarification regarding applicability of above mentioned provision in cases where death of an employee took place prior to 01 Jan 2006 and childless widow of the deceased employee got remarried before/on or after 01 Jan 2006, Ministry of Personnel, public grievance and pension, department of pension and pensioners welfare, New Delhi vide their OM No 1/4/2011-P&PW (E) dated 01 Apr 2011 has decided in consultation with Ministry of Finance (Department of Expenditure) that childless widow of a deceased employee who expired before 01 Jan 2006 shall also be eligible for family pension irrespective of the fact that the remarriage of the widow had taken place prior to/on or after 01 Jan 2006 subject to fulfilment of other conditions. The financial benefits in such cases has, however, been allowed w.e.f. 01 Jan 2006.”

14. The Govt of India, Ministry of Defence (Department of Ex-Servicemen Welfare) vide letter dated 12.11.2008 has again specified that for the purpose of grant of family pension, the ‘Family’ shall be categorized as under:-

Category I

(a) *Widow or widower, upto the death or re-marriage, whichever is earlier.*

(b) *Son/daughter (including widowed daughter) upto the date of his/her marriage/re-marriage or till the date he/she starts earning or till the age of 25 years, whichever is earlier.*

Category II

(c) *Unmarried/widowed/divorced daughter, not covered by category-I above, upto the date of marriage/re-marriage or till the date she starts earning or upto the date of death, whichever is earlier.*

(d) *Parents who were wholly dependent on the Armed Forces personnel when he/she was alive provided the deceased personnel had left behind neither a widow nor a child.*

Family pension to dependent parents, unmarried / divorced/widowed daughter will continue till the date of death.

Family pension to unmarried/widowed/divorced daughter in Category-II and dependent parents shall be payable only after the other eligible family members in Category-I have ceased to be eligible to receive family pension and there is no disabled children in respective categories shall be payable in order of their date of birth and younger of them will not be eligible for family pension unless the next above him/her has become ineligible for grant of family pension in that category.”

15. In the case in hand, we notice that applicant is not a childless widow who got re-married in the year 1991 when her son was an infant. Her son was paid family pension till he attained the age of 25 years and his family pension was stopped w.e.f. 15.05.2015. Since, applicant does not come in the ambit of above referred categories, therefore, she seems to be not entitled to receive Ordinary Family Pension.

14. In view of the above, O.A. is **dismissed**.

15. No order as to costs.

16. Pending application(s), if any, shall stand disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

(Justice Umesh Chandra Srivastava)
Member (J)

Dated : 13.09.2021
rathore