

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 266 of 2011****Monday, this the 6th day of September, 2021****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**Chand Pati
W/o of Sri Ram Ujagir Tewari
R/o Vill – Banswar, Post – Banswarkalan,
Distt – Faizabad (UP)

..... Applicant

Ld. Counsel for the Applicant : **Shri Dharmesh Sinha &**
Shri Pradeep Tiwari, Advocate

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi.
2. Senior Records Officer, ASC (South), Bangalore-560007.
3. Principal Controller of Defence Accounts Pensions, Allahabad.
4. Managing Director, Army Group Insurance AGI Bhawan Rao Tula Ram Marg, Post – Basant Vihar, New Delhi.
5. Smt Sadhana W/o Late Sri Ambrish Kumar and D/o Sri Jagdish Prasad Pathak, R/o Vill – Kuchera (Pure Chattar Pathak) Post – Kuchera, Distt – Faizabad.

..... Respondents

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**
Central Govt Counsel &
Shri Diwakar Singh, Advocate
For Respondent No. 5**ORDER**

1. The instant Original Application has been filed on behalf of the applicant under Section 14 of the Armed Forces Tribunal Act, 2007 for the following relief:-

“(i) The Hon’ble Tribunal may kindly be pleased to issue an order or direction quashing/setting aside the PPO No. F/010143/2009 (Army) dated 04.05.2009 contained in annexure no. to the OA.

(ii) The Hon’ble Tribunal may kindly be pleased to issue an order or direction commanding upon the Respondents No. 1 to 4 to grant half of the special family pension to the applicant w.e.f. 16.07.2008 till 31.11.2014.

(ii-a) The Hon’ble Tribunal may kindly be pleased to issue order or direction commanding upon the Respondents Nos. 1 to 3 to pay full special family pension to the applicant w.e.f. 01.12.2014.

(iii) The Hon’ble Tribunal may kindly be pleased to issue an order or direction commanding upon the Respondents No. 1 to 4 to pay half of the all death benefits of no. 14841792C Late Sep/MT Ambrish Kumar to the applicant after recovering the same from the respondent no. 5 if the same has already been paid to her.

(iv) The Hon’ble Tribunal may kindly be pleased to issue any other order or direction deemed to be just and proper under the circumstances of the case.

(v) The Hon’ble Tribunal may kindly be pleased to direct the respondents to pay cost of the OA.”

2. The factual matrix of the case is that applicant’s son Ex Sep (Late) Ambrish Kumar was enrolled in the Indian Army on 02.07.2003. While performing a convoy duty, the vehicle which was driven by the deceased soldier turned over and toppled resulted his death on 15.07.2008. That a courier for completion of family pension/claims documents was sent by the respondents to NOK i.e. Smt. Chand Pati (Mother) of Late Sep Ambrish Kumar, then it has come to the notice of courier from Panchayat Authority

that deceased soldier was married to Miss Sadhana before his death but Part II Order regarding his marriage with Smt Sadhana and change of NOK was not published before his death. On the basis of marriage certificate and affidavit given to the said courier, marriage casualty was published vide Part II Order dated 17.10.2008. Accordingly, family pension claim documents were prepared in favour of Smt. Sadhana, wife of deceased soldier and all death benefits including Special Family Pension were released in her favour. Thereafter, Smt. Chand Pati, mother of deceased soldier represented for division of Special Family Pension. Accordingly, details of her income were got assessed from the Tehsildar Faizabad who vide Income Certificate dated 02.09.2008 certified that joint income of Smt. Chand Pati alongwith her husband is Rs. 4000/-. Therefore, Smt Chand Pati was not found eligible for division of Special Family Pension by the respondents as per MoD letter dated 24.11.1999 being her income more than the ceiling limit fixed i.e. Rs. 2550/-. Being unsatisfied with the reply of respondents, the applicant filed a Civil Suit No. 430/2009 before the Civil judge, Senior Division, Faizabad which was returned to the applicant without any finding on 21.07.2011 advising to approach Armed Forces Tribunal for relief. The case of division of SFP between the applicant and widow was also examined, however, the applicant was not found entitled to division of SFP as her income (Rs. 4000/- per month) was in excess to ceiling limit of Rs. 2550/- per month, prescribed by the Govt. of India, MoD letters dated 26.08.1998 and 24.11.1999.

Being aggrieved, the applicant has filed the present Original Application for division of Special Family Pension.

3. Learned counsel for the applicant submitted that applicant's son was married to respondent No. 5, Smt. Sadhna on 26.01.2008 with Hindu rites and rituals but most important ceremony of 'Gauna' was not solemnized meaning thereby Smt. Sadhana never came to the house of applicant in the life of applicant's son nor her name was entered into the service records of her son whereas applicant's name was recorded in service documents as heir and therefore, she is entitled to received all the death benefits of her son. The applicant received a letter dated 31.07.2008 from respondent No. 2 after death of her son informing her to complete some attached forms and to send back to receive amount of AFPP Fund/Insurance in consultation with Zila Sainik Board, Faizabad. The Zila Sainik Board, Faizabad sent all the requisite documents to the respondents vide letter dated 12.11.2008 including consent letter of both the applicant and Smt. Sadhana for division of benefits in 50% share. Despite the aforesaid facts, the PPO was issued in favour of Smt. Sadhana in most arbitrary manner in ignorance of the facts that she never came to the house of her husband in his life time and her name was also not recorded as heir in service records of her son. After issuance of PPO, the applicant sent a representation to the respondent No. 2 for division of family pension and other benefits in equal share. Thereafter, applicant sent a letter dated 12.06.2009 to respondent No. 2 to settle the matter but nothing materialized. The applicant having

been aggrieved filed a Civil Suit No. 430/2009 before the Civil Judge, Faizabad which was subsequently withdrawn.

4. Learned counsel for the applicant further submitted that action of respondents is against Rules 215, 216 and 228 of Pension Regulations for the Army, 1961 (Part-1) ignoring division of Special Family Pension among the eligible family members of the deceased to support them. Learned counsel for the applicant pleaded that as per para 215, 216 and 228 of Pension Regulations for the Army, 1961, applicant is entitled to be paid half of the Special Family Pension.

5. Learned counsel for the respondents submitted that applicant's son Ex Sep (Late) Ambrish Kumar was enrolled in the Indian Army on 02.07.2003 and died on 15.07.2008 while performing a convoy duty. That a courier for completion of family pension/claims documents was sent to NOK i.e. Smt. Chand Pati (Mother) of Late Sep Ambrish Kumar and it had come to the notice of courier from Panchayat Authority that deceased soldier was married to Miss Sadhana before his death but Part II Order regarding his marriage with Smt Sadhana and change of NOK was not published before his death. On the basis of marriage certificate and affidavit given to the said courier, marriage casualty was published vide Part II Order dated 17.10.2008. Accordingly, family pension claim documents were prepared in favour of Smt. Sadhana, wife of deceased soldier and all death benefits including Special Family Pension were released in her favour. Thereafter, Smt. Chand Pati, mother of deceased soldier represented for division of Special Family Pension. Accordingly, details of her

income were got assessed from the Tehsildar, Faizabad who vide Income Certificate dated 02.09.2008 certified that joint income of Smt. Chand Pati alongwith her husband is Rs. 4000/-. Therefore, Smt. Chand Pati was not found eligible for division of Special Family Pension by the respondents as per MoD letter dated 24.11.1999 being her income more than the limit fixed i.e. Rs. 2550/-. Being unsatisfied with the reply of respondents, the applicant filed a Civil Suit No. 430/2009 before the Civil Judge, Senior Division, Faizabad which was returned to the applicant on 21.07.2011 without any finding advising to approach Armed Forces Tribunal for relief. The case of division of SFP between the applicant and widow was also examined, however, the applicant was not found entitled to division of SFP as her income (Rs. 4000/- per month) was in excess to ceiling limit of Rs. 2550/- per month, prescribed by the Govt. of India, MoD letters dated 26.08.1998 and 24.11.1999.

6. Thereafter, a supplementary counter affidavit was filed by the respondents on 15.05.2013 in which it is submitted that Smt. Sadhana (wife) became living heir who stood highest in the list for grant of family pension as per paras 216 and 220(b) of Pension Regulations for the Army, 1961 (Part-1), accordingly, Special Family Pension was released in her favour. Smt. Sadhana, widow of the deceased had also given her willingness for division of family pension with her mother-in-law. As per Para 228 of Pension Regulations for the Army, 1961 (Part-1), Special Family Pension is intended for the support of all the eligible members of a family, hence, Smt. Sadhana has also given her consent for division of

family pension with her mother-in-law. However, monthly income of applicant in Monthly Income Certificate dated 02.09.2008, issued by Tehsildar, Faizabad, has been shown Rs. 4000/- which is much more the ceiling limit of Rs. 2550/- as per Govt. of India letter dated 24.11.1999, hence, applicant was not found eligible for division of Special Family Pension as per rules. Thereafter, it was also intimated to the applicant that income of dependent of the deceased from all sources should not be more than Rs. 3550/- including DA as per revised/latest policy and if applicant submits required documents (Joint income certificate of applicant with her husband & consent certificate duly signed by Smt. Sadhana for division of family pension), then her case for division of Special Family Pension can be processed to PCDA. However, no such documents received from the applicant and therefore, case was not processed further. Later, applicant annexed a monthly income certificate dated 12.10.2009 with supplementary rejoinder affidavit (SRA) in which monthly income has been shown as Rs. 3400/- but the said monthly income certificate has not been found in service dossier of deceased soldier and at this belated stage, it is not possible to identify whether said certificate is correct or not as photocopy of income certificate has been found enclosed with SRA which is also not certified/attested. He pleaded for dismissal of O.A.

7. We have heard learned counsel for the parties and have perused the material on record.

8. We have given our earnest consideration to the submissions of the learned counsel for the parties and find that efforts for

division of Special Family Pension between wife of deceased soldier and the applicant were made as per rules but applicant's monthly income (Rs. 4000/-) being more than the ceiling limit of Rs. 2550/- and Rs. 3550/- as per revised policy, does not entitle her to get 50% share/division of Special Family Pension between her and Smt. Sadhana (wife). Hence, as per Govt. of India, MoD letters dated 26.08.1998 and 24.11.1999; applicant is not entitled to relief prayed by her to grant half of the Special Family Pension.

9. We also find that applicant's claim for division of Special Family Pension has rightly been rejected by the respondents as per rules, which needs no interference.

10. In view of above, we are of the opinion that O.A. is devoid of merit, deserves to be dismissed and is accordingly, **dismissed**.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 6th Sept., 2021

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