AFR
Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 384 of 2020

Monday, this the 06th day of September, 2021

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

Smt. Giraji Devi W/o No. 2658666 late Sep Shree Kishan, R/o Village- Surwari, post- Kosikalan, Tehsil -Chhata, District- Mathura, UP.

……**Applicant**

Ld. Counsel for the Applicant: **Shri B.B Tripathi, Advocate**

Versus

1. Union of India, through Secretary, Ministry of Defence, Government of India, New Delhi.
2. The Records Officer, The GRENADIERS Records, Jabalpur PIN- 908776, C/o 56 APO.
3. The Principal Controller of Defence Accounts (Pension), Darupadi Ghat, Allahabad - 211014.

…… **Respondents**

Ld. Counsel for the Respondents : **Shri Ashish Kumar Singh, Central Govt Counsel**

ORDER

"Per Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)"

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

(a) Issue an order, direction and command to the respondents to pay Liberalized Family Pension to the applicant from due date in the light of circular issued by the PCDA (P), Allahabad and to pay arrears thereof along with interest from the date 24.06.2005 till the date of actual payment.

(b) Issue an order, direction and command to the respondents to consider and decide the representation of the applicant dated 08.11.2018, contained in Annexure No. 9 by passing a reasoned and speaking order within the time frame so fixed by this Hon'ble Tribunal by granting the relief(s) as prayed for therein.

(c) Issue such other order/direction which may be deemed just and proper in the circumstances of the case.

(d) *Allow the Original Application with cost against the respondents in view of the facts and circumstances, legal provisions and Grounds raised in the application*.

2. Brief facts of the case are that husband of the applicant was enrolled in the Indian Army on 14.01.1968. Husband of the applicant was killed in action during **"OP CACTUS LILLY"** on 16.12.1971 and his death was declared as **'Battle Casualty'**. After death of the husband of applicant, she was granted Special Family Pension from 01.02.1972 till her re-marriage with Shri Hukam Singh on 06.05.1974 vide PPO dated 03 Apr 1972. After remarriage, applicant was issued PPO whereby she was paid

Ordinary Family Pension which is being credited in her bank account. After remarriage of the applicant, Smt Charan Devi, mother of the deceased soldier was granted Special Family Pension and applicant was granted Ordinary family pension. Applicant filed application for grant of Liberalised Family Pension (LFP) vide letter dated 22.10.2011 and intimated the respondents that parents of the deceased soldier have been died prior to 2006 but Liberalised family pension was not granted to her. Being aggrieved, the applicant has filed instant Original Application for grant of Liberalised Family pension.

3. Learned counsel for the applicant submitted that after death of her husband, applicant was granted Liberalised Family Pension from 06.05.1974 till her widowhood. After remarriage she was granted ordinary family pension whereas she was entitled for Liberalised Family Pension in terms of Min of Def letter dated 25.06.2005. Ordinary family pension of the applicant was revised from time to time. The applicant represented her claim for grant of Liberalised Family Pension to which she was informed to submit relevant forms. She was again asked to submit a certificate issued by Gram Surpanch regarding her remarriage wherein the date of remarriage be mentioned along with an affidavit. Applicant submitted the required documents but the same was not granted to her. Learned counsel for the applicant submitted that applicant is entitled Liberalised Family Pension from the date of her remarriage in accordance with a revised policy dated 24.06.2005.

In support of his contention, learned counsel for the applicant has placed reliance on the judgment passed by AFT, Regional Bench Kochi in O***.A. No 178 of 2016, T.S. Suma, vs Union of India and Ors***. Learned counsel for the applicant prayed that respondents be directed to grant Liberalised family Pension to the applicant from the due date.

4. Per contra, learned counsel for the respondents submitted that applicant was granted Liberalised Family Pension after death of her husband. After remarriage, she was granted Ordinary Family Pension in terms of AI 2/S/64 read with Govt of India letter No 200847/Pen-C/71 dated 24 Feb 1972 and mother of the deceased soldier was granted Special Family pension. Applicant filed various applications for grant of Liberalised Family Pension to which she was asked to submit certain documents mandatory for processing the case with Pension Sanctioning Authority which she has not submitted till date. Contrary to this, applicant has filed instant Original Application for grant of Liberalised Family Pension. Learned counsel for the respondents submitted that in view of the facts, Original Application is devoid of merit and lacks substance and is liable to be dismissed.

5. Heard learned counsel for the parties and perused the documents available on record.

6. In the instant Original Application, the applicant has raised issue that she is entitled for liberalized family pension with effect from 01.01.2006 in terms of Govt of India, Min of Def letter No 1

(1)/2001/D(Pen-C) dated 24 June 2005. In the counter affidavit, respondents have not declined grant of liberalised family pension to the applicant but stated that applicant has not produced mandatory documents required for grant of liberalised family pension.

7. Liberalised family pension, apparently was introduced post implementation of 4th CPC along with war injury pension. Prior to 01.01.1996 (implementation of 5th CPC), widows in receipt of liberalised family pension (LFP) would continue to draw LFP on remarriage, only if they married the real brother of the deceased soldier. If they married anybody else, LFP was stopped and they were granted ordinary family pension. However, post implementation of 5th CPC i.e., 01.01.1996 continuation of LFP for widows remarrying anybody was permitted. In case of widows who were remarried prior to 01.01.1996 and whose LFP was stopped, restoration was permitted with effect from 24 June 2005. In case of special family pension, widows who remarried prior to 01.01.1996, were not eligible for pension. The condition was relaxed by the Govt with effect from 20 January 2009, holding them eligible for grant of special family pension. In the instant case LFP was stooped to the applicant on her remarriage on 06.05.1974. However, she was granted ordinary family pension.

8. As can be appreciated, a widow may remarry based on the circumstances under which she is living. If she decides to remarry,

it is her choice as to whom she should marry. It is also observed that a widow remarrying the brother of her late husband is a custom that is prevalent/was prevalent only in certain sections of the society and is not a common phenomenon across the country or among all the religious faiths being followed in our nation. In our society wife of elder brother is treated as mother and wife of younger brother is treated as daughter, then how can any lady marry with the brother of her husband. Therefore, granting monetary allowance only to a widow who remarries her husband's brother and denying it to all other widows, in our view, is clearly discriminatory.

9. The Honourable Apex Court in ***D.S. Nakara & Ors v. Union of India***, (1983) 1 SCC 305, had clearly held that Articles 14 and 16 of the Constitution aim at equality and inhibit discrimination and arbitrariness, as any arbitrary action negates equality. The Honourable Apex Court had held as follows:

> *"11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz., (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question. (see)Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar (1) The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus i.e., causal connection between the basis of classification and object of the statute under consideration. It is equally well settled*

by the decisions of this Court that Art.14 condemns discrimination not only by a substantive law but also by a law of procedure.

"12. After an exhaustive review of almost all decisions bearing on the question of Article 14, this Court speaking through Chandrachud, C.J. in In re Special Courts Bill 1978, (1979) 1 SCC 380, restated the settled propositions which emerged from the judgments of this Court undoubtedly insofar as they were relevant to the decision on the points arising for consideration in that matter. Four of them are apt and relevant for the present purpose and may be extracted. They are:(SCC pp. 424-25, para 72)

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4. The principle underlying the guarantee of Article 14 is not that the same rules of law should be applicable to all persons within the Indian territory or that the same remedies should be made available to them irrespective of differences of circumstances. It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is substantially the same.

. . . . . .

6. The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, artificial or evasive.

7. The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that that differentia must have a rational relation to the object sought to be achieved by the Act."

10. The other fact of Article 14 which must be remembered is that it eschews arbitrariness in any form. Article 14 has, therefore, not

to be held identical with the doctrine of classification. As was noticed in ***Maneka Gandhi's*** case in the earliest stages of evolution of the Constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that Article 14 forbids discrimination and there will be no discrimination where the classification making the differentia fulfils the aforementioned two conditions. However, in ***EP. Royappa v. State of T. N.***, (1974) 4 SCC 3, it was held that the basic principle which informs both Articles 14 and 16 is equality and inhibition against discrimination. This Court further observed as under: (SCC p. 38, para 85).

> *"From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is, therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment".*

11. The Apex Court had, therefore, clearly held that any act which is unequal according to logic or law is violative of Article 14. In this liberated age, women have broken through the so called glass ceiling and have occupied the highest positions in many nations, including in our own, where we have had a President and Prime Minister who were both women. When that be so, in our view, it is discriminatory to deny a lady, monetary allowance

earned by her late husband and in this case, by making the supreme sacrifice while safeguarding national security interests, merely because she remarries or because she remarries a person of a category not specified in a Regulation. As we observed earlier, remarriage of a widow to her husband's brother is not a common custom prevailing across all sections of the society or all parts of our nation. In fact, in many parts, a brother's wife is treated by his younger siblings almost on par with their mother and given similar respect. Therefore to deny the lady an allowance merely because she remarries or did not marry her late husband's brother, in our view, is discriminatory, violative of Article 14 of the Constitution and not in keeping with the principles enunciated by the Honourable Apex Court in Nakara (supra).

12. Section 26 of the Indian Contract Act, 1872 says that every agreement in restraint of the marriage of any person, other than a minor, is void. The public policy to be followed in the matter of marriage of any person is reflected in this Section. A contract, in restraint of marriage, is void if its object or effect is to restrain or prevent a party from marrying any person or which is deterrent to marriage. Similarly, a contract is void which unduly restricts or hampers the freedom of persons to marry at will. The applicant, being the widow of deceased soldier, based on the Regulations applicable, was entitled to and was granted LFP. But, on her remarriage, that was discontinued for the reason that the remarriage of the applicant violated paragraph 3 of Appendix-II of

the Regulations governing the matter. That paragraph says that the widow shall continue to receive the monetary allowance until her remarriage. It also specifies that the payment of allowance shall, however, be continued to a widow who remarries the late husband's brother and lives a communal life with the living heirs eligible for family pension. These two provisions in this paragraph cannot be held to be valid in the light of the public policy in respect of marriage of a person. A widow is competent and entitled to remarry according to her choice and will. The conditions preventing the remarriage of the widow or restricting her choice to marry to the late husband's brother alone for claiming LFP will only be conditions imposed in restraint of marriage and hence, violate the public policy to be followed in respect of marriage. Therefore, those two conditions stipulated in paragraph 3 of Appendix-II to the Regulations are void as they are against the public policy in respect of marriage. Those conditions, therefore, are liable to be declared as void and hence, we declare so.

13. In view of the foregoing, the Original Application is **allowed** directing the respondents to restore liberalised family pension to the applicant as per rule position. However, from the pleadings on record, it emerges that family pension of the applicant was never stopped even on her remarriage, but only reduced to ordinary family pension and mother of the deceased soldier was granted Liberalised Family Pension. We, therefore, direct that the arrears of

the liberalised family pension to the applicant be restricted to a period of three years prior to the date of filing of the O.A. in accordance with the principles enunciated by the Honourable Apex Court in Union of India and Others v. Tarsem Singh, 2008 (8) SCC 648. The O.A. was filed on 18.02.2019. The arrears as indicated above shall be paid to the applicant within a period of four months from the date of receipt of a copy of this order.

14. There will be no order as to costs.

(Vice Admiral Abhay Raghunath Karve) Member (A)

(Justice Umesh Chandra Srivastava) Member (J)

Dated: 06 September, 2021

Ukt/-