

Court No. 1

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No.780 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)”**

1. Smt. Sakhina Begum, wife of Mumtaj Ahmed, Resident of Village and Post- Aung, Police Station - Aung, Tahseel Bindki, district Fatehpur (UP).
2. Mumtaj Ahmed, Son of late Baddhu khan, Resident of Village Post –Aung, Police Station - Aung, Tahseel Bindki, District Fatehpur (UP).

..... Applicants

Ld. Counsel for the Applicants : **Shri Birendra Prasad Singh, Advocate**

Versus

1. Union of India through the Secretary, Ministry of Defence, New Delhi
2. The Directorate of Air Veterans, Subrato Park, new Delhi-110010.
3. The Officer In-charge, Air Force Records Office, Subrato Park, New Delhi 110010.
4. Officer in charge, Family Pension, Subrato Park, New Delhi-110010.
5. The Principal Controller of Defence Accounts (Pension), Allahabad.

.....**Respondents**

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

ORDER

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

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

(i). to issue an appropriate order or direction to the respondents hereto to immediately grant the benefits of family pension with effect from the date the son of the applicants Late Sakir Husen bearing Service No. 9720585 has expired i.e. 19.12.2011 and /or

(ii). issue an appropriate order or direction to the respondents hereto to immediately release the amount towards the arrears of family pension along with suitable interest, and /or

(iii). issue an appropriate order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case including an order of awarding damages as well as cost of the instant application and against the respondents, hereto.

2. Rejoinder affidavit filed by learned counsel for the applicants is taken on record.

3. Facts giving rise to Original Application in brief are that son of the applicants Late Sakir Husen was enrolled in the Air Force on 17.11.1997 and was discharged from service on 17.07.1998 in low medical category being unfit for further service in Air Force. Late Sakir Husen was granted disability pension vide PPO No 08/14/B/1170/99 at the time of discharge. After discharge from Air Force service, son of the applicants was married with Ms. Afsana Khan, D/o Suleman Khan and blessed with a daughter named Muskan. Later on Ms. Afsana Khan was divorced by way of notary affidavit. Sakir Husan died on 19.12.2011. As per service

documents, Shri Mumtaj Ahmad (father) was recorded in service documents as next of kin. Applicants after death of their son approached the respondents for grant of pension which was rejected. Then applicants filed writ petition before Hon'ble High Court at Allahabad which was dismissed stating that such matters are maintainable at Armed Forces Tribunal. Being aggrieved, the applicants have filed instant Original Application for grant of family pension.

4. Learned counsel for the applicants submitted that Late Sakir Husen after discharge from army was granted disability pension. After discharge from Air Force service, he married to Ms. Afsana Khan, D/o Suleman Khan and was blessed with a daughter named Muskan. Later on Ms. Afsana Khan was divorced by way of notary affidavit and Sakir Husen died on 19.12.2011. As per service documents name of Shri Mumtaj Ahmad (father) was recorded in service documents of the deceased soldier as next of kin. Applicants after death of their son approached the respondents for grant of pension. She was asked to forward documents certain documents. Instead of forwarding all documents asked by the respondents, she was not granted family pension. She was informed that Ms. Muskan, daughter of Late Sakir Husen is the eligible heir for grant of family pension. Then applicants filed writ petition before Hon'ble High Court at Allahabad which was dismissed stating that such matters are maintainable at Armed Forces Tribunal. Learned counsel for the

applicants pleaded that in view of aforesaid, parents of the deceased soldier are entitled for grant of family pension.

5. Per contra, learned counsel for the respondents submitted that after death of her son, Smt Sakhina Begum, mother of the deceased soldier approached respondents for grant of family pension. She was informed to submit unmarried certificate in respect of her deceased son. After submission of the requisite documents by Smt Sakhina Begum, it was revealed that late Sakir Husen was married to Smt Afsana Khan on 30 May 2004 and a daughter named Ms. Muskan was born out of the wedlock. The couple got divorced in the year 2009. The veteran during life time neither approached for endorsing the occurrence of her marriage, birth of child and divorce nor for grant of family pension. Smt Sakhina Begum was informed vide letter dated 26.12.2013 that Ms. Muskan, daughter is the eligible heir for grant of family pension. Smt Sakhina Begum filed writ petition before Hon'ble High Court Allahabad for grant of family pension which was dismissed stating that such matter is entertainable before Armed Forces Tribunal. Now she has filed instant O.A. for grant of family pension. He pleaded that in view of the facts and legal position the Original Application is misconceived and devoid of merits as such liable to be dismissed.

6. Heard learned counsel for the parties and perused the record.

7. From perusal of documents it emerged that :-

(a) Late Sakir Husen was granted disability pension after discharge and he died on 19.12.2011.

(b) Late Sakair Husen married to Ms. Afsana Khan, D/o Suleman Khan and was blessed with a daughter named Muskan. born out of his wedlock.

(c) During his life time, Late Sakir Husen neither made any declaration regarding his marriage with Ms. Afsana Khan, birth of daughter Muskan and divorce with his wife nor Ms. Afsana Khan approached respondents for grant of family pension to her daughter.

8. The question before us to decide is whether parents of the deceased soldier are entitled for grant of family pension or not?

9. This point is covered in Govt of India, MoD letter No 1(3)/99/D (Pension/Services) dated 24.11.1999, Para 1 (b), which states that family pension to parents may be granted subject to the Armed Forces Personnel has not left behind a widow/widower, eligible son or daughter or a widowed/divorced daughter, who will have a prior claim to family pension in the order indicated. Hence as per the ibid Govt Policy parents of the deceased soldier are not entitled for grant of family pension.

10. Further, as per para 6 of Air Force Instruction 08/85, the definition of 'Family' consists of wife, minor sons and unmarried minor daughters. In the instant case, wife of the deceased soldier Smt Afsana Khan has been divorced, hence she is disqualified for grant of family pension. However, Ms. Muskan being minor daughter is eligible for grant of family pension if she approach respondents.

11. In view of the facts and circumstances of the case, we find that parents of the deceased soldier are not entitled for grant of family pension.

12. In the result, we hold that the claim of family pension has rightly been rejected by the respondents which needs no interference. Resultantly, O.A. is **dismissed**.

13. No order as to cost.

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

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)
Member (A) Member (J)

Dated: 13 September, 2021

Ukt/-