

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****O. A. No. 24 of 2012**

Wednesday, this the 05th day of July, 2017

Hon'ble Mr. Justice D.P. Singh, Member (J)
Hon'ble Air Marshal Anil Chopra, Member (A)

Smt. Diropa Devi, Mother of late
No. 15614063X L/Nk Durvesh Kumar
wife of Shri Chandra Pal,
R/o Village and Post Agrana,
Tehsil- Sikandra Raw,
District- Hathras (Mahamaya Nagar), U.P. Applicant

Ld. Counsel for the : Shri R. Chandra, Advocate
Applicant

Vs.

1. Union of India through,
the Secretary, Ministry of Defence,
Government of India,
New Delhi.
2. Chief of the Arfmy Staff,
Integrated Headquarters of Ministry of
Defence (Army) DHQ
Post Office New Delhi.
3. Director, Army Group Insurance Fund
AGI Bhawan, Rao Tula Ram Marg,
Post Bag No. 14, PO : Vasant Vihar,
New Delhi - 110057
4. The Officer In-charge,
Records Brigade of the Guards
Pin - 900 746, C/o 56 APO
5. Principal Controller of Defence Accounts
(Pension), Draupadi Ghat,
Allahabad, U.P.
6. Smt Poonam Devi, Wife of late
L/Nk Durvesh Kumar,
C/o Shri Vikram Singh Shakya,

Shakya Mechanic Workshop, GT Road,
Kurawali, District Mainpuri, U.P.

...Respondents

Ld. Counsel for the : Dr. Shailendra Sharma Atal,
Respondents. Advocate, Assisted by
Maj Salen Xaxa, OIC Legal Cell.

Shri Shailendra Kumar Singh
for respondent no.6.

ORDER (Oral)

1. This petition under Section 14 of the Armed Forces Tribunal Act, 2007 has been preferred being aggrieved with the denial of payment of share in ordinary family pension after the death of deceased son, namely, Durvesh Kumar.
2. We have heard the learned counsel for the applicant Shri R. Chandra and the learned counsel for the respondents no.1 to 5 Dr. Shailendra Sharma Atal as well as Shri Shailendra Kumar Singh for the private respondent no.6 and perused the record.
3. L/Nk Durvesh Kumar was enrolled in the Army (Brigade of the Guards) on 03.01.2001. On completion of his basic military training he was posted to 14 Guards with effect from 09.12.2001. Admittedly, he was married with Smt Poonam Devi on 27.06.2004. While serving with 14 Guards, he committed suicide on 24.03.2008. According to the nomination for Army Group Insurance submitted by him after his marriage for notification of Part II order, he had nominated Smt Poonam Devi his wife for 50% share of

insurance benefits under Army Group Insurance Scheme in the event of his death. He had not nominated anyone for remaining 50% share. However, under contingent nominee clause, he had nominated his mother Smt Dirop Devi for 50% share. That after the death of L/Nk Durvesh Kumar his widow Smt. Poonam Devi executed her consent for sharing of 25% of insurance benefits to her mother-in-law, namely, Smt Diropa Devi. Accordingly, claim of insurance benefits under Army Group Insurance Scheme was submitted for payment. The Army Group Insurance Authority made payment of insured amount, giving 50% share of insurance benefits amount to Rs.3,75,000/- to respondent no.6 Smt Poonam Devi. As agreed by Smt Poonam Devi, respondent no.6 25% share of insurance benefits amounting to Rs.1,87,500/- was paid to Smt Diropa Devi, mother of deceased. Remaining 25% of Insurance benefits amounting to Rs.1,87,500/- was invested in Social Security Deposit Scheme in the name of Army Group Insurance Fund for three years to cater for any representation. However dispute arose between Smt. Poonam Devi and Smt Diropa Devi for remaining amount of insurance benefits.

4. Feeling aggrieved Smt. Diropa Devi filed Writ Petition No.50211 of 2011 in the High Court of Judcature at Allahabad. The petition was disposed of on 02.09.2011 with liberty to file a fresh comprehensive representation before the competent authority. On receipt of Court order,

respondent no.2 i.e. Army Group Insurance Authority has issued a speaking order on 30.09.2011 to Poonam Devi with a direction that they are ready to make payment of balance amount of insurance benefits on receipt of one of the following documents under intimation to Smt. Diropa Devi, settle the dispute amicably and in case the dispute is not resolved amicably, Smt. Poonam Devi may receive succession certificate by impleading Smt. Diropa Devi as party. However, Smt. Diropa Devi, the applicant filed Writ Petition No. 63559 of 2011 in the High Court of Judicature at Allahabad for payment of remaining 25% share of insurance benefits amount of Rs.1,87,500/-, which was invested in Social Security Deposit Scheme. The petition was dismissed by the Allahabad High Court on the ground of availability of alternative remedy by order dated 08.11.2011.

5. Subject to above, applicant has filed the present O.A. in the Tribunal for payment of Rs.1,87,500/- of insurance amount. However, at later stage by an amendment, applicant has deleted the prayer for insurance amount but maintained her relief for the purpose of her share in regular pension and maintenance.

6. Regulation 212 of Pension Regulations deals with regard to grant regular family pension. For convenience Regulation 212 (supra) is reproduced as under :-

Ordinary Family Pension

212. See AI 51/80 reproduced in officer section

Note for the Readers

1. Ordinary family Pension to who applicable. Families of Armed Forces Personnel except.
 - (a) NCC Auxiliary Cadet Corps and Lok sahayak Sena.
 - (b) TA personnel except when they die while rendering Military service
 - (c) Persons who are executed on being convicted of death sentence by court.
2. **Ordinary Family Pension when admissible.**
 When an individual dies on account of causes which are neither attributable to or aggravated by Military Service.
 - (i) either while in service provided he had been found fit after successful completion of the requisite training and medical examination for commission or at the time of enrolment in the case of personnel below officer rank.
 - (ii) or after retirement/discharge from services and was on the date death in receipt of or eligible for retiring/special/Reserve/disability/invalid/War injury pension.
 - (iii) Death due to suicide does not disqualify the heir from ordinary family pension.

Subject- Grant of Ordinary Family Pension to Widows/Children Army/Navy/Air Force Personnel.

1. This Ministry's letter No A/u 724/AG/PS-4(a)/965/B/D / ser) dt. 3-8 1979 regarding grant of Ordinary Family Pension widows/children of Army/Navy/Air Force personnel, is amended as under:-
 Partial modification of the provision of AI 2/S/64 and corresponding instructions on the navy and Air Force sides, the President has been pleased to waive the condition of one year's continuous drive service at the time of death/invalidment of service personnel of the purpose of grant of ordinary family pension in respect of such personnel under the aforesaid instructions provided the person immediately before his recruitment/commissioning was found fit after medical commission.

2. *This corrigendum will have effect from 27th January, 1979.*

3. *This issues with the concurrence of Ministry of finance (Def.) their v.o.l No. 1850/S/Pen dt 4-1-1982.*

Auth- Govt. of India, Min of Defence New Delhi, letter No 06724/AG/PS-4 (a)/39/B/D (Pensioners) dt 23-1-1982."

7. A plain reading of the aforesaid regulation shows that ordinary family pension may be granted to the widow and not to the mother. Since statutes provide for payment of family pension to wife of the deceased, no share in the ordinary family pension can be granted to any other person. It is well settled proposition of law when a statute required a thing to be done in a particular manner, then it should be done in that manner alone and not otherwise. The principle was recognized in ***Nazir Ahmad Vs. King-Emperor*** AIR 1936 PC 253 and, thereafter it has been reiterated and followed consistently by the Apex Court in a catena of judgments.

8. In view of the above, it is not open for us to oblige the mother of the deceased by providing her a share in the ordinary family pension of his widow. Chief Controller of Defence Accounts (Pensions) Allahabad has also informed the applicant that in the absence of any nomination or statutory provision no share may be granted to the applicant.

9. In view of the above, O.A. lacks merit and is rejected.

(Air Marshal Anil Chopra)
Member (A)

(Justice D.P. Singh)
Member (J)

Dated: July 05,2017

JPT