

Reserved
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

O. A. No. 232 of 2014

Tuesday, this the 27th day of February, 2018

Hon'ble Mr. Justice S.V.S.Rathore, Member (J)
Hon'ble Air Marshal BBP Sinha, Member (A)

Rohini Devi mother of No. 17002131-H cfn Anuj Kumar, wife of Sri Devendra Singh, resident of village & post Satwara, Tehsil- Dibai District Bulandshahr (U.P.) Pin- 203201.

..... Applicant

Ld. Counsel for the Applicant : **Shri Shailendra Kumar Singh, Advocate**

Versus

1. Union of India, through the Secretary, Ministry of Defence, New Delhi.
2. Chief of Army Staff, Army Headquarters, South Block, New Delhi.
3. Army Recruiting Office, Meerut Cant, Meerut.
4. Commanding Officer, 608, EME Bn, Pin- 906608, C/O 56 APO
5. Commanding Officer, EME Records (Pen Gp), Pin- 900453, C/O 56 APO
6. PCDA (Pension), Allahabad.
7. Kavita D/o Jitendra Singh, Village Raipur Daulatpur, Post Kakethal, Tehsil Atharoli, District Aligarh (U.P.) Pin- 202281

...Respondents

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

Assisted by : **Maj Piyush Thakran, OIC Legal Cell.**

ORDER

“Per Hon'ble Air Marshal BBP Sinha, Member (A)”

1. By means of this application under Section 14 of the Armed Forces Tribunal Act, the applicant as mother of deceased soldier has challenged the alleged

arbitrary and illegal payment of full pension and terminal benefits to the wife of deceased soldier and has prayed for following reliefs:-

“(i) To issue an appropriate order or direction to respondents to divide the family pension of cfn Anuj Kumar between the applicant and his wife as per entitlement.

(ii) To issue an appropriate order or direction to respondents to divide the family terminal benefits of cfn Anuj Kumar between the applicant and his wife as per entitlement.

(iii) Any other relief as considered proper by this Hon’ble Tribunal may please be granted in favour of the applicant.

(iv)The cost of the application may also be directed to be awarded. ”

2. The brief facts of the case are that No. 17002131 H Ex Cfn Anju Kumar was enrolled in the Army, Corps of EME, on 19.08.2009 and while serving with 6121 (I) Fed Wksp (608 EME Bn) he was deployed in Highly Active Field Area in an operational scenario on line of control in Jammu and Kashmir Area. While performing duty on account of land slide he was injured and ultimately succumbed to the injuries sustained by him. Thereafter a court of inquiry was held in the matter and his death was declared as a battle casualty attributable to military service. At the time of enrolment the deceased was unmarried and he had nominated Smt Rohini Devi, his mother as his legal heir to receive all the death benefits. However, after his death the fact of his marriage emerged and it became clear that he was married to Smt Kavita on 12.02.2011 and a female child, namely, Lavi Kumari was born from their wedlock on 19.03.2013 but publication of his marriage and child birth was not carried out during his life time. Accordingly, same was published posthumously vide EME Records Pat II Order No 0833/NE-1/NE&PG/001/2012 dated 10.11.2012 and 0833/NE-1/ NE & PG/044/2012 dated 10.10.2012 respectively.

3. In the counter affidavit filed on behalf of the respondents no. 1 to 6 the fact of enrolment in the Army Corps of EME on 19.08.2009 and serving with 6121 (I) Fed Workshop (608 EME Bn) has been admitted. It has also been admitted by the respondents that he was deployed in Highly Active Field Area in an operational scenario on line of control of Jammu and Kashmir Area. It has also been admitted by the respondents that he was hit by a stone from the land slide on the back of

his head and sustained severe head injury and after a court of inquiry the death of the individual was held to be a battle casualty attributable to military service in accordance with Para Q of Appendix A to AO 11/2003. The fact of the marriage of deceased and a female child from marriage has also been admitted by the respondents. Thus, as per respondents the wife became the legal heir and NOK to receive all his legitimate death benefits and family pension. It has also been stated by the respondents that parents of the deceased soldier forwarded a petition dated 18.08.2012 through 608 EME Bn vide letter No. 17002131 PC/Est-1 dated 31.08.2012 for granting all death terminal benefits in their favour being allegedly totally dependent upon the deceased and also on the ground that the wife of deceased was presently staying at her parental house. Being a dispute, the said petition was referred to Army Recruiting Office, Meerut Cantt to investigate the genuineness and dependency of both parties vide letter dated 24.11.2012, a copy of which has been annexed as Annexure No.R 1 to the counter affidavit. Pursuant to aforesaid representation dated 31.08.2012 Army Recruiting Office, Meerut Cantt vide letter dated 08.01.2013 requested both the parties to report to the office alongwith all the original supporting documents for their necessary investigation. However, without reporting to the ARO the applicant Smt Rohini Devi directly made a petition dated 19.02.2013 for grant of death benefit of her son. Said petition was duly replied advising her to report to the ARO for necessary investigation vide EME Records' letter dated 11.03.2013, copy of which has been filed as Annexure No.R2 to the counter affidavit. Thereafter the applicant also served a legal notice dated 04.04.2013 through her Advocate, addressed to Army Group Insurance Fund, Adjutant General's Branch for grant of full payment of Army Group Insurance Fund in her favour. In reply thereto vide letter dated 20.05.2013 it has been intimated to the applicant that as per Policy of AGIF even if any individual on getting married has not made nomination in the name of his wife, his earlier nomination automatically becomes null and void and the widow automatically becomes the nominee to receive death benefits. The respondents

pursuant to the request of the applicant for death terminal benefits sent several letters to her requesting to submit relevant papers to support her claim and to appear before them to settle the dispute amicably by mutual consent with respondent no.7 Smt Kavita wife of deceased but all went in vain.

4. The case of the respondent no.7 Smt Kavita is that she is legally wedded wife of late CFN Anuj Kumar (No.17002131H). Her marriage was solemnized with him on 12.02.2011 and out of their wedlock one daughter Miss Lavi Kumari was born on 19.03.2012. Deponent also submitted an application dated 31.07.2012 to the District Magistrate Bulandshahr complaining that her in laws are pressurising her to sign several documents and trying to oust the deponent from the house. Respondent no.7 has also stated that the husband of the applicant Shri Devendra Singh is working as Postman in his own village and is getting salary of Rs.10582.26 and in support thereof has filed copy of pay bill No. 3/09-2015 as Annexure No. CA-5. She has also reported that second son of applicant is serving in Army. Accordingly the respondent no.7 has pleaded that wife of a Government servant is not entitled to get retiral benefit of her late son and therefore she is the rightful claimant of his retiral benefits.

5. We have heard learned counsel for the applicant as also learned counsel for the respondents. We have also gone through the material facts on record.

6. So far the claim of the applicant for death benefits and family pension consequent upon death of soldier i.e. son is concerned, she has claimed that she was dependent upon his son and there is no one else to support her for her livelihood. However she has stated in Para-4.2 of the petition that by putting hard labour she is earning very meagre amount of Rs.2000/- per month from labour at this old age.

7. The respondents no.1 to 6 by filing their counter affidavit have also supported the claim of the respondent no.7 by stating that her name and the name of her daughter was entered into the relevant records posthumously by due publication and they are the legal heirs of deceased and entitled to all death retiral

benefits and family pension. They have also pleaded that they gave several opportunities to the applicant to file relevant documents in support of her claim in question and to settle the dispute amicably with Smt Kavita, wife of deceased soldier. They also requested her to appear before the concerned authority to settle the dispute but she never appeared for the same and have also not sent the relevant papers asked for. On the other hand respondent no.7 Smt Kavita, wife of the deceased has pleaded that the applicant's husband is serving as Postman in his own village and is getting salary of Rs.10582.26 per month and in support thereof has also filed copy of pay bill No. 3/09-2015 as Annexure No. CA-5 to her counter affidavit.

8. Admittedly in this case the deceased soldier was unmarried at the time of his enrolment in the Army on 19.08.2009. Accordingly, he had nominated Smt Rohini Devi, his mother, the applicant in this case as his nominee. However, consequent upon his death when it emerged that he was married to Smt Kavita on 12.02.2011 and had a female child, namely, Lavi Kumari from their wedlock, due publication to this effect was made vide EME Records Part II Order No. 0833/NE-1/NE&PG/001/2012 dated 10.11.2012 and 0833/NE-1/ NE & PG/044/2012 dated 10.10.2012 respectively. Accordingly the wife and daughter of the deceased became legal heirs and are entitled to receive all legitimate death benefits and family pension consequent upon his death. It is also admitted fact that the husband of the applicant is serving as Postman and is getting Rs.10582.26 per month as salary. It has also been brought on record by the applicant herself that by putting hard labour she is earning Rs.2000/-. It is also clear that the respondents have made clear to the applicant vide letter dated 20.05.2013 that as per the existing Policy of AGIF even if any individual on getting married has not made nomination in the name of his wife, his earlier nomination automatically becomes null and void and the widow automatically becomes the nominee to receive death benefits. At this stage we would not like to get into the policies of

AGIF since the subject of jurisdiction of courts of law on AGIF is sub-judice in Hon'ble Apex Court.

9. The division of family pension could have been considered by respondents only with the consent of the widow or production of succession certificate from the Court of law but the same could not be achieved by applicant in this case. On the contrary the widow has made complaint to the authorities concerned stating that she is being pressurised by the applicant to sign some papers against her wish.

10. From what has been stated above, the legal position is crystal clear. The legally wedded wife will always have precedence over mother for family pension. Division of pension of a widow is an exception and not the rule. The exceptional circumstances under which a widow's pension can be divided with mother does not exist in this case. It is also relevant to mention here that the respondents have duly considered the claim of the applicant for division of pension and gave several opportunities to her to support her claim with relevant documents but she failed to do so. The respondents have duly considered her claim by a reasoned and speaking order, hence, there is no justification and reason to interfere with the same.

11. In view of discussions made above, the petition for division of death benefits and family pension preferred by the applicant deserves to be rejected and is dismissed accordingly.

12. No order as to costs.

(Air Marshal BBP Sinha)
Member (A)

(Justice S.V.S. Rathore)
Member (J)

Dated: February 27, 2018

JPT