

Form No. 4
{See rule 11(1)}
ORDER SHEET
ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Court No.1

O.A. No. 27 of 2022

Smt Parvati Singh W/o
Late Nb Sub Bishwa Nath Singh
 By Legal Practitioner for the Applicant

Applicant

Versus

Union of India & Others
 By Legal Practitioner for Respondents

Respondents

Notes of the Registry	Orders of the Tribunal
	<p><u>01.04.2022</u> <u>Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)</u> <u>Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)</u></p> <p style="text-align: center;">Heard Shri Shailendra Kumar Singh, Ld. Counsel for the applicant and Ms Appoli Srivastava, Ld. Counsel for the respondents. O.A. is Partly allowed. For orders, see our judgment passed on separate sheets.</p> <p style="text-align: center;">(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava) Member (A) Member (J)</p> <p>rathore</p>

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW**Original Application No 27 of 2022**Friday, this the 01st day of April, 2022

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

Smt Parvati Singh (W/o JC-30694 Naib Subedar (Late) Bishwa Nath Singh), resident of House No 548 CHA, 142 GHA, Deep Nagar Dhaunda Khera, Near RDSO Gurudwara, Post-Manak Nagar, Lucknow (UP)-226001.

..... Applicant

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

Versus

1. Union of India, through the Secretary, Govt of India, Ministry of Defence (Army), South Block, New Delhi-110011.
2. Chief of the Army staff, Integrated Headquarters of MoD (Army), Post-DHQ, New Delhi-110011.
3. OIC Records, EME Records, PIN-900453, C/o 56 APO.
4. OC, Stn Work Shop, EME, Lucknow Cantt, Lucknow (UP)-226002.
5. O/o PCDA (P) (Army), Draupadi Ghat, Allahabad (UP)-211014.

..... Respondents

Ld. Counsel for : **Ms Appoli Srivastava**, Advocate
 the Respondents Central Govt Counsel

ORDER (Oral)

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 reliefs:-

(i) To quash the respondent No 3 letter dated 11 Jul 2019 to the extent succession certificate is being called for from competent court of law.

(ii) To direct the respondents to endorse the name of applicant and her daughter in the former service records of the deceased soldier as legally wedded wife and daughter.

(iii) To release family pension in favour of applicant w.e.f. 09 May 2002 in terms of Pension Regulations of Indian Army alongwith suitable rate of interest of the arrear of pension as deemed fit and proper by this Hon'ble Tribunal.

(iv) Any other relief as considered deemed fit and proper in the circumstances by this Hon'ble Tribunal be awarded in favour of the applicant.

2. Brief facts of the case are that Bishwa Nath Singh (now deceased) was enrolled in the Army on 08.06.1943 and he was discharged from service w.e.f. 07.06.1967 (AN) in the rank of Naib Subedar. After discharge he was granted service pension vide PPO No S/18813/1967 dated 08.06.1967 (Annexure A-2). He was re-employed as Instrument Mechanic with Station Workshop EME, Lucknow on 04.11.1967 as a Civilian Central Govt Employee and superannuated on 30.06.1984. After retirement he was granted service pension vide PPO No 0/1765/84 (Annexure A-3). Bishwa Nath Singh died on 08.05.2002 (Annexure A-4). Earlier, at the time of his re-employment the deceased soldier had opted for counting his former military service to his civil service for earning service pension from Central Govt (option dated 27.07.1983-Annexure R-3). Applicant is in receipt of family pension from Central Govt. She, claiming to be third wife of the deceased soldier, had approached EME Records on 10.07.2019 for publication of her and her daughter's casualty. In support of her claim she produced marriage certificate, Aadhar Card, PAN Card and Voter Card.

EME Records approached Zila Sainik Kalyan Evam Punarvas Karyalaya vide letter dated 11.07.2019 to submit certain documents duly verified for publication of Part-II Order which are yet to be submitted. Applicant has filed this O.A. to endorse her and her daughter's name in deceased soldier's former service record and pay family pension w.e.f. 09.05.2002.

3. Submission of learned counsel for the applicant is that applicant's husband was enrolled in the Army on 08.06.1943 prior to independence and he was discharged from service on 08.06.1967. At the time of discharge he was granted service pension vide PPO No S/18813/1967. He further submitted that after discharge, he joined as civilian employee in Station Workshop, Lucknow w.e.f. 04.11.1967 and after retirement he was granted service pension vide PPO No 0/1765/1984. Applicant's husband died on 08.05.2002 and accordingly, she was granted family pension w.e.f. 09.05.2002. Learned counsel for the applicant further submitted that on getting to know that she is also entitled to family pension related to her applicant's former service in the Army, she approached EME Records and Zila Sainik Karyalaya Lucknow but in turn she has been asked to produce certain documents alongwith succession certificate for getting family pension of services rendered by her deceased husband in the Army which is not understood. Applicant's learned counsel further submitted that since the applicant is already in receipt of family pension from Central Govt, therefore there should be no need to submit succession certificate as asked for.

4. On the other hand, the respondents admitted that Bishwa Nath Singh (now deceased) had served in the Army for the period from 08.06.1943 to 07.06.1967 but submitted that since he opted to add his Army service to civil service for the purpose of pension vide option certificate dated 27.07.1983, no pension/family pension is entitled from the Army. His

further submission is that since applicant's name as well as her daughter's name is not recorded in service documents of the deceased soldier, Part-II order to this effect can only be published on receipt of documents as asked vide letter dated 11.07.2019. He further submitted that the family details enclosed in the civil documents cannot be obtained at this belated stage as all Station Workshops have been disbanded and documents in respect of the applicant are not traceable at this stage. His further submission is that as per Rule 20 of CCS (Pension) Rules, a Govt servant who after having rendered military service, was re-employed in a civil service or post on or before 31.12.2003 and who on such re-employment in accordance with an option exercised under the Central Civil Service (Pension), Rules 1972 ceases to draw his pension, is required to refund the same to the Govt if already drawn. He submitted that in such circumstances no family pension is applicable to the applicant. The learned counsel pleaded for dismissal of O.A.

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

6. Bishwa Nath Singh had served in the Army for the duration 08.06.1943 to 07.06.1967 and he retired from service in the rank of Naib Subedar. After retirement he was re-employed as a civilian in Station Workshop, Lucknow on 04.11.1967 and retired from the organization on 30.06.1984. He was granted service pension vide PPO No 0/1765/84 (Annexure A-3). He died on 08.05.2002. Applicant, who is claiming to be wife of the deceased soldier, whose name is not entered in service documents, has prayed that her and her daughter's name be entered in service documents and she be granted family pension from Army as she is in receipt of family pension from Central Govt for the services rendered by her deceased husband in Station Workshop, Lucknow.

7. We have perused the record and we find that applicant had submitted an option certificate dated 27.07.1983 for counting his military service towards his civil service for the purpose of earning service pension from civil department. As such, he was not entitled to service pension from the Army as his Army service was merged with civil service. We have also perused CCS (Pension) Rules 20 as per which the deceased soldier was not entitled to service pension from the Army. For convenience sake, the extract of aforesaid rule is appended below:-

“20. Counting of military service rendered before civil employment. A government servant, who after having rendered military service, was re-employed in a civil service or post on or before 31st December, 2003 and who on such re-employment, in accordance with an option exercised under the Central Civil Services (Pension) Rules, 1972, ceased to draw his pension and refunded or agreed to refund:-

- (i) the pension already drawn; and*
- (ii) the value received for the commutation of a part of military pension; and*
- (iii) the amount of retirement gratuity including service gratuity, if any;*

shall count previous military service, as qualifying service.”

8. As per letter dated 11.07.2019 issued by Records EME, applicant is deceased soldier's third wife whose particulars are not mentioned in Army Records. Admittedly, applicant's name is entered in PPO No 0/1765/84 (Annexure A-3) issued by Central Govt Department, therefore, she seems to be legally wedded wife of the deceased soldier. The Army authorities have asked certain documents with regard to publication of Part-II Order in respect of her and her daughter as mentioned in letter dated 11.07.2019.

9. In view of the above, we are of the view that since the deceased soldier had opted to merge his former Army service with civil service, he was not entitled to service pension from the Army in terms of Rule 20 (supra). A conspectus of the above observation is that the applicant is also not entitled to family pension from Army.

10. We also take a note that since family pension has been allowed to the applicant from civil department w.e.f. 09.05.2002 (i.e. w.e.f. next date of death of her husband) vide endorsement made on PPO No 0/1765/84, it is held that Part-II order with regard to NOK of the deceased soldier be published on the basis of documents asked vide letter dated 11.07.2019. While publishing Part-II Order, succession certificate is not mandatory in terms of endorsement made on PPO.

11. In view of the above, O.A. is **partly allowed**.

12. The respondents are directed to publish necessary Part-II Order in respect of the applicant and her widowed daughter on receipt of requisite documents from the applicant within a period of three months from today.

13. No order as to costs.

14. Miscellaneous application(s) pending, if any, shall stand disposed off.

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

Dated: 01.04.2022
rathore