

**RESERVED****COURT NO. 2****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****O.A. No. 743 of 2021****Tuesday, this the 16<sup>th</sup> day of April, 2024****"Hon'ble Mr. Justice Anil Kumar, Member (J)  
Hon'ble Maj Gen Sanjay Singh, Member (A)"**

Smt AMBIYA KHATOON W/o No 01036625Y Ex late Hav Naimullah Khan, R/o Village &amp; Post-Usia, District-Ghazipur (UP)-232330.

..... Applicant

Ld. Counsel appeared **-Shri Vijay Kumar Pandey**, Advocate  
for the applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, RK Puram, New Delhi-110011.
2. OIC Records, Armoured Corps Records, PIN-900476, C/o 56 APO.
3. PCDA (P), Draupadi Ghat, Allahabad (U.P.).
4. The CPPC through its competent officer, 1<sup>st</sup> Floor, New building, Hazratganj, Lucknow (UP).
5. Allahabad Bank through its Branch Manager, Dildarnagar Branch, District-Ghazipur (UP)-232326.
6. Jamea Arabea through its Principal, Makhzanul Uloom, Dildarnagar, Ghazipur (UP).
7. Mr Suhail Khan, son of 1<sup>st</sup> wife of No 01036625Y Ex late Hav Naimullah Khan, Vill-Husainabad Usia, PO & PS-Dildarnagar, Distt-Ghazipur (UP)-232326.
8. Mr Junaid Khan, son of 1<sup>st</sup> wife of No 01036625Y Ex late Hav Naimullah Khan, Vill-Husainabad Usia, PO & PS-Dildarnagar, Distt-Ghazipur (UP)-232326.
9. Mr Parvez Khan, son of 1<sup>st</sup> wife of No 01036625Y Ex late Hav Naimullah Khan, Vill-Husainabad Usia, PO & PS-Dildarnagar, Distt-Ghazipur (UP)-232326.

.....Respondents

Ld. Counsel appeared **-Shri Yogesh Kesarwani**, Advocate  
for the Respondents Central Govt Standing Counsel

**ORDER****“Per Hon’ble Justice Anil Kumar, Member (J)”**

1. Bring aggrieved with non grant of family pension, applicant had preferred petitions dated 09.09.2019, 22.09.2019, 09.08.2020 and 15.12.2019. Based on applicant’s petitions, the respondents vide letter dated 03.12.2020 had requested District Magistrate, Ghazipur to verify the genuineness of the case but the verification report has not been received so far. This O.A. has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for grant of family pension through which applicant has made following prayers:-

(i) This Hon’ble Tribunal may kindly be pleased to quash the impugned rejection order dated 03.12.2020 as contained in annexure No 1 to this original application, passed by Opp Party No 2 and grant the family pension to the applicant w.e.f. 07.05.2019 with 18% p.a. since due date to actual date of payment in the interest of justice.

(ii) This Hon Tribunal may kindly be pleased to award the cost Rs 20,20,000/- (Rs Twenty lac and twenty thousand only) to the applicant against the opposite parties and allow the same.

(iii) This Hon’ble Tribunal may be pleased to pass any order or direction which this Hon’ble Court may deem just and proper be passed in favour of the applicant.

2. Shorn of unnecessary details, the facts of the case are that the husband of the applicant was enrolled in the Indian Army on 09.03.1964 and discharged from service on 17.08.1979 (AN) under Rule 13 (3) Item iv (i) of the Army Rules, 1954 on compassionate grounds at his own request. He had rendered 17 years, 05 months and 11 days service in the Army. After his discharge, husband of the applicant was sanctioned service pension which he started drawing with effect from 18.08.1979 vide PPO No. S/C/2360/79 dated 22.09.1979. He died on 06.05.2019.

3. During the course of his service, the deceased soldier was married to Smt Zahida Khatun (first wife) and he had three sons from this wedlock. After death of first wife on 17.02.2012, the deceased soldier re-married to Smt Ambiya Khatun (the applicant) on 04.11.2013 and forwarded documents to the respondents for publication of death of first wife and re-marriage occurrence with Smt Ambiya Khatun. Based on documents submitted by the deceased pensioner, applicant's name was entered in service documents, as all the children born to Smt Zahida Khatun (first wife) were above 25 years of age and not entitled to draw family pension after demise of their parents. Accordingly, corrigendum PPO No

S/Corr/4394/2014 was issued by PCDA (P), Allahabad notifying name of the applicant for grant of family pension.

4. After demise of the deceased pensioner, Shri Suhail Khan, stepson of the applicant submitted an application dated 13.08.2020 alongwith photocopy of Talaknama issued by Jamea Arabia Makhzanul-Uloom, Dildar Nagar, Ghazipur (UP) mentioning therein that since Smt AMBIYA KHATUN was divorced by his father on 27.07.2015, she is not entitled for grant of family pension. Meanwhile, applicant made several communications with Record Office, Armoured Corps for grant of family pension on the ground that her name is notified in Corrigendum PPO issued by PCDA (P), Allahabad. Accordingly, Record Office made protracted correspondence with District Magistrate, Ghazipur (UP) with request to forward investigation report but till date no report being received from their office, family pension is held up. This O.A. has been filed for grant of family pension.

5. Learned counsel for the applicant submitted that applicant being legally wedded wife of the deceased soldier is entitled to grant of family pension. His further submission is that applicant's name being entered in Army records as well as

in PPO and first wife of her deceased husband being died on 17.02.2012, she is entitled for grant of family pension.

6. Learned counsel for the applicant further submitted that applicant's pension cannot be stopped on the ground of false and fabricated complaint made by respondent No 7 who after serving legal notice did not appear in the Court and matter proceeded ex-parte vide order dated 10.11.2023. He pleaded that she was never divorced by her deceased husband during lifetime. He pleaded for grant of family pension to the applicant.

7. On the other hand, learned counsel for the respondents submitted that the applicant is second wife of the deceased soldier whose name is entered in PPO. It was further submitted that applicant's family pension was stopped based on a complaint received from respondent No 7. On receipt of the complaint, several communications were made with District Magistrate, Ghazipur (UP)/Zila Sainik Welfare Office, Ghazipur for verification of documents but despite repeated requests/reminders, requisite report has not been received.

8. Learned counsel for the respondents further submitted that since the matter is disputed amongst family members, grant of family pension to the applicant is not feasible in

absence of authenticated investigation report which has still not been received from the concerned District Magistrate/Zila Sainik Welfare Office. He pleaded for transfer of this case to family court to settle the dispute/dismissal of O.A.

9. We have heard Shri Vijay Kumar Pandey, learned counsel for the applicant and Shri Yogesh Kesarwani, learned counsel for the respondents. We have also gone through the material placed on record.

10. No. 1036625W Ex Dfr late Naimullah Khan of Armoured Corps being in receipt of service pension died on 06.05.2019. During the course of his service, he was married with Smt Zahida Khatun (first wife) and had three sons from this wedlock. Smt Zahida Khatun died on 17.02.2012. After her death, the deceased pensioner married to Smt Ambiya Khatun (applicant) on 04.11.2013 and her name is entered in service documents of the deceased soldier. After demise of the pensioner, applicant applied for grant of family pension. Accordingly, Corrigendum PPO No S/Corr/4394/2014 dated 05.02.2015 duly notifying the name of Smt Ambiya Khatun was issued by PCDA (P), Allahabad.

11. Based on a complaint made by Suhail Khan (elder son of Smt Zahida Khatun) who is stated to be employed in Uttar Pradesh Police, family pension was stopped. On receipt of regular applications from the applicant regarding grant of family pension, letters were sent to District Magistrate, Ghazipur/Zila Sainik Welfare Office, Ghazipur for ascertaining the genuineness of the claimant but till date nothing has been heard from their office.

12. Notices served upon respondent No 6 to 9 being held sufficient, it was decided vide order dated 22.09.2023 that the case shall proceed ex-parte against them. Shri Suhail Khan (Respondent No 7) is the person who had sent copy of divorce certificate along with application dated 13.08.2020, but despite issuing notices he has not turned up. It is submitted that no other person has come forward to claim family pension and children of first wife are over 25 years of age.

13. The applicant has been approaching the respondents regularly for grant of family pension soon after death of her husband. In her letter dated 09.08.2020, requisite documents were submitted to Officer-in-Charge, Armoured Corps Records which seems to be sufficient for grant of family pension. PCDA

(P), Allahabad has withheld family pension as verification report has not been received from District Magistrate, Ghazipur/Zila Sainik Welfare Office, Ghazipur.

14. We find that applicant's name has already been notified in PPO No. S/Corr/4394/2014. Her pension was stopped subsequent to a complaint made by Shri Suhail Khan (respondent No 7) who even after summoning two times did not appear before the Court. In the circumstances, applicant, who is legally wedded wife of the deceased soldier, seems to be entitled to family pension as her name is already in records of the deceased soldier and a PPO to this effect has already been issued by the respondents.

15. The right to pensionary benefit cannot be taken away without proper justification as held by the Hon'ble Supreme Court in the case of ***State of Jharkhand & Ors vs Jitendra Kumar Srivastava & Anr***, (2013) 12 SCC 210. Additionally, right to receive pension is recognised as right to property. A person cannot be deprived of his/her pension without the authority of law which is the constitutional mandate enshrined in Article 300-A of the Constitution.

16. In view of the above, O.A. is **allowed**. Impugned order, if any, is set aside. Respondents are directed to grant her



family pension w.e.f. 07.05.2019 alongwith arrears within a period of four months on receipt of a certified copy of this order. Default will invite interest @ 8% p.a.

17. No order as to costs.

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

**(Maj Gen Sanjay Singh)**  
**Member (A)**

**(Justice Anil Kumar)**  
**Member (J)**

Dated : 16.04.2024

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**RESERVED**  
**(Court No 2)**

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**  
**ARMED FORCES TRIBUNAL, REGIONAL BENCH,**  
**LUCKNOW**

O.A. No. 743 of 2021

**Smt AMBIYA KHATOON**

Applicant

By Legal Practitioner for the Applicant : Shri Vijay Kumar Pandey, Advocate

**Versus**

**Union of India & Ors**

Respondents

By Legal Practitioner for Respondents : Shri Yogesh Kesarwani, Advocate

Notes of the Registry	Orders of the Tribunal
	<p><b><u>16.04.2024</u></b> <b><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></b> <b><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></b></p> <p>Judgment pronounced. O.A. No. 743 of 2021 is <b>allowed</b>. For orders, see our judgment and order passed on separate sheets.</p> <p><b>(Maj Gen Sanjay Singh)</b> Member (A) <i>rathore</i></p> <p><b>(Justice Anil Kumar)</b> Member (J)</p>