

RESERVED
Court No. 1

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW**

Original Application No. 115 of 2018

Tuesday, this the 04th day of December, 2018

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

Smt. Rajeshwari Devi wife of Late No. 4166554 Ex Sepoy
Chander Singh, R/o Village : Lamtari (Now Jingal), Post –
Bishonakhan, District Pithoragarh, PIN-262541, State : Uttra
Khand.

.... Applicant

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

Versus

1. Union of India through the Secretary, Ministry of Defence,
Government of India, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarters of
Ministry of Defence (Army), DHQ Post Office, New Delhi-
110011.
3. The Officer-In-Charge, Record The Kumaon Regiment,
PIN-900473, C/O 56 APO.
4. The Chief Controller of Defence Accounts, Draupadi Ghat,
Allahabad-14 (UP).

... Respondents

Ld. Counsel for the: **Dr. Shailendra Sharma Atal**, Advocate.
Respondents.

ORDER

“Per Hon’ble Air Marshal B.B.P. Sinha, Member (A)”

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

(I) The Hon’ble Tribunal may be pleased to direct the respondents to amend/modify the sanction/order as mentioned in letter dated 12/07/2016 (Annexure No. A-1) for grant of Special Family Pension to applicant wef 10/09/1987 from date of death of her husband and a fresh Corrigendum PPO be issued.

(II) The Hon’ble Tribunal may be pleased to direct the respondents to grant special family pension to the applicant w.e.f. 10/09/1987 (date of death) to 10/05/2011 along with its arrears with interest at the rate of 18 percent per annum.

(III) Any other appropriate order or direction which the Hon’ble Tribunal may deem just and proper in the nature and circumstances of the case.

2. Briefly stated facts of the case are that the husband of the applicant (Late No. 4166554 Ex Sepoy Chander Singh) was enrolled in Kumaon Regiment of Indian Army on 02.09.1974 as a Sepoy. He was invalided out from service on 27.01.1985 being low medical category for the diagnosis of “INSULIN DEPENDENT

DIABETES MELLITUS (250)". The disability of the applicant's husband was assessed as aggravated by military service and percentage of disability was assessed as 40%. He was granted service element from 28.01.1985 and disability pension from 28.01.1985 to 19.09.1987 and from 20.09.1987 for life. On 10.09.1987 the husband of the applicant died while he was admitted in Pithoragarh Military Hospital. The applicant was granted ordinary family pension by the respondent No. 4 vide their PPO No. F/NA/5413/1988. On 24.12.2009 the applicant made an appeal to Respondent No. 3 for granting her a Special Family Pension (SFP). On 30.04.2010 and 05.06.2010 again the applicant submitted Appeals for grant of Special Family Pension. The applicant preferred O.A. No. 512 of 2012 before this Tribunal. Vide order dated 15.07.2014 this Tribunal disposed of the O.A. with direction to respondent No. 2 to decide the representation of applicant dated 10.10.2012 for grant of Special Family Pension. As a follow up of the order the applicant was granted Special Family Pension w.e.f. 11.05.2011 by the respondents. Thereafter, on 04.06.2016, the applicant also preferred an additional Appeal before Kumaon Records Office for granting Special Family Pension from the date of her husband's death i.e. 10.09.1987, but, the respondents have rejected the same vide their order dated 12.07.2016. Hence, the present Original Application.

3. The Ld. Counsel for the applicant pleaded that the disability of the husband of the applicant was assessed as aggravated by military service and was assessed at 40% for two years from

28.01.1985 to 19.09.1987. The husband of the applicant has died on 10.09.1987 i.e. within three years of discharge due to a disease which was aggravated by military service, hence, the respondents have granted the Special Family Pension (SFP) to the applicant. He submitted that the applicant is entitled to Special Family Pension (SFP) from the date of her husband's death, however, the same has been sanctioned by the respondents w.e.f. 11.05.2011. He vehemently pleaded for grant of Special Family Pension (SFP) to the applicant w.e.f. 10.09.1987.

4. Per contra, the respondents have filed Counter Affidavit. In Counter Affidavit the respondents have stated that after a lapse of 23 years, the applicant represented for grant of Special Family Pension vide her application dated 24.12.2009. The statement of case for obtaining Govt. sanction to condone the delay for claiming Special Family Pension was transmitted to Integrated Headquarters of MoD (Army) vide Respondent No. 3 letter dated 10.10.2012. Integrated Headquarters of Ministry of Defence (Army) issued Government sanction dated 07.04.2015 to treat disability of Ex Serviceman as attributable to military service for the purpose of grant of Special Family Pension w.e.f. 11.05.2011 (from the date of first appeal) based on which Respondents No. 4 was issued with PPO dated 24.06.2015. As per the PPO the applicant has been granted Special Family Pension w.e.f. 11.05.2011. He quoted the law of limitation on this matter and pleaded for O.A. to be dismissed.

5. We have heard Ld. Counsel for the parties and perused the material placed on record. The only point involved in this case for adjudication is whether in view of law of limitation, the applicant is entitled for Special Family Pension with effect from 10.09.1987 i.e. from date of death of her husband or from the date of submission of her first appeal i.e. 11.05.2011 ?

6. From perusal of record it transpires that for the first time the applicant has preferred a representation to respondents for grant of Special Family Pension (SFP) on 24.12.2009. This representation is enclosed as Annexure No. 5 of the Original Application. The respondents have admitted the receipt of this representation dated 24.12.2009 in the Counter Affidavit. It thus transpires that the respondents have granted Special Family Pension to the applicant w.e.f. 11.05.2011 on the basis of a subsequent appeal. The sole criteria adopted by the respondents for grant of Special Family Pension is that the same is to be granted from the date of preferring the first Appeal.

7. In view of above mentioned facts we are of the considered opinion that the applicant had represented for grant of Special Family Pension (SFP) to the respondents for the first time on 24.12.2009. This representation therefore should be treated as first appeal and therefore the applicant is entitled to grant of Special Family Pension w.e.f. 24.12.2009 i.e. the date of preferring first representation/appeal. Due to the law of limitation the applicant is not entitled to Special Family Pension (SFP) from

the date of her husband's death. In view of above, the Original Application deserves to be partly allowed.

8. Accordingly, **Original Application No. 115 of 2018** is hereby **allowed** to the extent that applicant is entitled for grant of Special Family Pension with effect from 24.12.2009 instead of 11.05.2011. Respondents are directed to ensure the payment of arrears of Special Family Pension from 24.12.2009 to 10.05.2011 within a period of four months from the date a certified copy of this order is produced before the respondents, failing which they have to pay interest @9% on the amount from the date of its accrual till the date of actual payment.

No order as to costs

(Air Marshal B.B.P. Sinha)
Member (A)

Dated: December 2018

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

AKD