

Court No. 1
Reserved Judgment

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

Original Application No. 61 of 2014

Tuesday, this the 18th day of December, 2018

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

Sukhvir Singh, S/o Late Samant Singh (No. 1119074 Ex Hav), R/o Village – Jajpur Banjara, Post – Bara Kesav, District – Farukhabad (U.P.)

..... Applicant

Ld. Counsel for the – **Shri Ashok Kumar, Advocate**
Applicant

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi- 110011.
2. Officer Incharge, Records Office, Artillery Records, Nasik Road Camp, PIN – 908802.
3. Chief Controller of Defence Accounts, (Pensions), Draupadi Ghat, Allahabad (U.P.).

..... Respondents

Ld. Counsel for the – **Dr. Shailendra Sharma Atal,**
Respondents **Central Govt. Counsel.**

ORDER

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

1. This Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 whereby the applicant has claimed following reliefs:-

(i) This Hon’ble Court may graciously be pleased to direct the respondent Nos. 2 & 3 to make publication of the name of applicant and his disability in Part-II order (NE Series) of the service record of his father (Late Samant Singh No. 1119074 Ex Hav) and accordingly release the requisite pension and its arrear in the name of applicant, in accordance with rules of the department being the dependent and disabled son of his father Late Samant Singh No. 1119074 Ex Hav w.e.f. 26.07.2013 from the date of death of father of applicant.

(ii) This Hon’ble Court may further be pleased to pass such other and /or further order as deem fit, proper and necessary in the circumstances of this case.

(iii) Award costs to the applicant.

2. The undisputed factual matrix on record is that the father of the applicant was enrolled in the Army on 05.05.1949 and was discharged from service on 15.06.1967 as Havildar. Father of the applicant was married with Mrs Shakuntala Devi. He was having three sons including the applicant. Names of two children have already been recorded in the service documents of the father of the applicant. The applicant Shri Sukhvir Singh was born after the retirement of his father, hence his name was not recorded in service documents of his father. He is disabled since birth (paralysis 50% in both legs). The

father of the applicant after his retirement came to know about the rules and regulations of the department and preferred application during his life time for making entry of the name of applicant in his service documents. He sent birth certificate, resident proof, educational qualification certificate and disability certificate to Record Office duly verified by Zila Sainik Welfare Board. In between, father of the applicant died on 26.07.2013. Thereafter the applicant approached respondents for grant of benefit of disabled child including pension which has not been accepted by the respondents. Being aggrieved, the applicant has preferred this Original Application. The delay in filing the Original Application has been condoned vide this Tribunal order dated 04.03.2014.

3. Learned counsel for the applicant has pleaded that the father of the applicant was enrolled in the Army on 05.05.1949 and was discharged from service on 15.06.1967. He was married with Shakuntala Devi and was having three sons. His two sons were born during his service time and their names were recorded in his service documents. His third disabled son, Sukhvir Singh was born after retirement of his father, hence his name could not be entered in the service documents. The mother of the applicant has expired on 06.08.2010. Father of the applicant approached concerned authorities for publishing Part II Order of his disabled son Sukhvir Singh who was born

after his retirement. The applicant is disabled since birth (paralysis 50% in both legs). Photocopy of handicapped certificate issued by Dr. VK Dube, Artho Surgeon is enclosed in the Original Application. The father of the applicant approached the respondents vide applications dated 28.09.2011 and 24.02.2012 to make entry of his third son in the service documents. He sent birth certificate, resident proof, educational qualification certificate and disability certificate to record office duly verified by Zila Sainik Welfare Board. In between, father of the applicant died on 26.07.2013. On the said earlier requests and further follow up action, Records, Artillery Regt, Nasik Road Camp (MH) has now published Part II order of the applicant as the disabled son of late Havildar Samant Singh. Learned counsel for the applicant submitted that the applicant is an unmarried disabled person and has no source of livelihood. He was solely dependent on his parents and both of them have already expired. There is no body to support him in day to day life. His brothers have separated him. As per Rule 69 of Pension Regulations for the Army, Part – I, (2008), disabled dependents of Army personnel are entitled for family pension, hence the applicant should be given family pension.

4. Per Contra, learned counsel for the respondents submitted that Part II Order regarding the birth of Sukhvir Singh, son of late Havildar Samant Singh has been published

wherein date of birth of the applicant is shown as 02.02.1984. In addition Part II Order reflecting disability of the applicant has also been published. He further submitted that the claim of the applicant for grant of family pension will be processed after completion of necessary formalities by the applicant and his filling up of the necessary LPC cum data sheet.

5. Heard learned counsel for the parties and perused the record. The question which needs to be answered is whether the applicant as a handicapped child of deceased soldier is entitled for family pension or not as per setout rules and what are the formalities which are required to be done by the applicant.

6. After hearing the counsels, we have perused the records. We find that since 2011, the late father of the applicant has been trying to complete the formalities of entering his third son, i.e. the applicant, born after his retirement and also to endorse his son as a handicapped child in his service records for the benefit of family pension. The father of the applicant had died in the year 2013. The mother of the applicant had already expired in 2010 and now the handicapped child is struggling to complete the formalities which could not be completed during the life time of his parents.

7. While perusing the records, we find that the respondents have taken two Part II Orders, one for the applicant being the

son of deceased soldier and second for his being a handicapped child. We have noticed that the Part II Order recording the applicant as son is in order however the Part II Order reflecting his handicapped child status is defective and won't help him in getting a family pension because it would not pass audit requirements. We find that the name of disease has been written wrongly in the Part II Order. We have also come across a letter from Record Office which indicates that the Record Office has published the Part II Order on the applicant being a handicapped child reluctantly because they have serious doubts on the genuineness of the photocopy of the medical certificate given by the applicant. They also claim that original medical certificate has not been given to them.

8. Considering all the above mentioned aspects, we are disappointed at the attitude of respondents and the record office. It is a travesty of justice that the Government has so many schemes for handicapped children in the country and the army itself has so many welfare organizations and schemes for jawans. In spite of that a handicapped child of a jawan who is without parents, with polio in both the legs is struggling to beat the bureaucratic and paper requirements of Record Office to get his family pension for the last 7 – 8 years.

9. Thus in the interest of substantive justice, we direct the respondents to carry out a fresh medical checkup of the

applicant in an Army Hospital which is nearest to applicant as per the required Government policy to ascertain his eligibility for family pension as a handicapped child of the deceased soldier. Considering that the applicant is handicapped and can't move around, the respondents are directed to detail a special courier/representative who will personally visit and communicate with the applicant for co-ordination of his medical checkup at the earmarked Army Hospital. Thereafter, based on the medical report publish the necessary Part II Order for handicapped child again with annotation of correct disease. The Record Office and their special courier/representative will also help the handicapped child in completing the required paper formalities for family pension, if found to be eligible. The respondents are directed to comply with the order within a period of three months from the date of production of a certified copy of this order.

10. With the aforesaid direction, the **Original Application No 61 of 2014** stands **disposed off**.

No order as to cost.

(Air Marshal BBP Sinha)
Member (A)

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

Dated : December, 2018
ukt/-