

**RESERVED**

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

**TRANSFERRED APPLICATION No. 33 of 2022**

Friday, this the 15<sup>th</sup> day of December, 2023

**Hon'ble Mr. Justice Anil Kumar, Member (J)**

**Hon'ble Maj Gen Sanjay Singh, Member (A)**

Soni Lal S/o late Sep/WM Shri Ram resident of village-  
Mubarakpur Sanpo, Post-Rajuman, Tehsil-Maharajganj,  
District-Rae Bareili.

.....Petitioner

Ld. Counsel for the : **Ms Hemlata**, Advocate  
Applicant

**Versus**

1. Union of India, through Secretary, Ministry of Defence,  
New Delhi.
2. Defence Pension Liaison Cell, HQ Allahabad Sub Area,  
Allahabad-211011, through its Record Officer, for  
Officer-in-Charge.

.....Respondents

Ld. Counsel for the: **Mrs Anju Singh**, Advocate  
Respondents. Central Govt Counsel

**ORDER**

1. Being aggrieved with non grant of family pension, petitioner's mother Smt Siva Rani W/o late Sep Shri Ram had filed Writ Petition bearing No. 944 (S/S) of 2009 in the Hon'ble High Court of Judicature at Allahabad which on transfer to this Tribunal has been numbered as Transfer Application No. 33 of 2022. During the pendency of said petition in the Hon'ble High Court, Smt Siva Rani died in the year 2010 and thereafter, vide this Tribunal's order dated 20.07.2023 petitioner's name has been substituted. The petitioner has sought the following reliefs:-

*"(i) Issue a writ, order or direction in the nature of certiorari, quashing the order letter No 3102/5441679/32/Pen (FP) dated 05 Sep 2002, contained in Annexure No 2 to the writ petition.*

*(ii) Issue a writ, order or direction in the nature of mandamus, commanding and directing the opposite parties to grant the family pension of the petitioner under her request and intimated her for the same, expeditiously.*

*(iii) Any other order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case and in the interest of justice may also be passed.*

2. Brief facts of the case are that petitioner's father was enrolled in the Army on 21.11.1963 and he was discharged from service at his own request on extreme compassionate

grounds on 29.10.1966 having completed only 02 years, 11 months and 09 days service. His father, being a non-pensioner, died at home on 08.05.1967. The facts on record show that after death of Army person, petitioner's mother Smt Siva Rani during her lifetime had approached the authorities concerned for grant of family pension but it being denied by the respondents vide letter dated 05.09.2002, this petition was filed for grant of family pension but during the pendency of writ petition she died on 21.03.2010 and thereafter, her son Soni Lal was substituted.

3. Learned counsel for the petitioner submitted that petitioner's father being enrolled in 5 Gorkha Rifles of the Indian Army on 21.11.1963 was transferred to Assam Regiment on 08.05.1964. He was serving with 6 Assam w.e.f. 10.07.1964 and died during service period on 08.05.1967. It was further submitted that Army authorities had sent communication about his death and cremation was done at the level of unit authorities.

4. Learned counsel for the petitioner further submitted that after lapse of 27 years, mother of the petitioner approached

District Soldier Welfare Office for grant of family pension which being denied, Writ Petition No 944 (S/S) of 2009 was filed by his mother in the Hon'ble High Court of Judicature at Allahabad. During the pendency of writ petition, Smt Siva Rani died in the year 2010 and on transfer of the petition to this Tribunal, his name has been substituted vide order dated 09.07.2023.

5. Further submission of learned counsel for the petitioner is that since petitioner's father had died during the course of his service and his mother died on 21.03.2010 during pendency of writ petition, he be granted life time arrears of family pension in respect of his deceased mother.

6. Per contra, learned counsel for the respondents submitted that petitioner's father being enrolled in the Army on 21.11.1963 was discharged from service at his own request on extreme compassionate grounds on 29.10.1966 under Rule 13 (3) III (iv) of Army Rules, 1954 having rendered only 02 years, 11 months and 09 days service. After discharge from service, he died at home on 08.05.1967. It was further submitted that as per Rule 132 of Pension Regulations for the Army, 1961

(Part-I), one should have completed minimum 15 years qualifying service for earning service pension. Since petitioner's father did not complete 15 years service, no pension was granted to him.

7. Learned counsel for the respondents further submitted that as per Army Instruction 51/80, family pensionary benefits will be admissible to widows/legal heirs of officers, JCOs, ORs and NCsE who died or die while in service or after retirement with a retiring, disability or invalid pension/special family pension. Since petitioner's father was not in receipt of any type of pension, the petitioner is also not entitled to life time arrears of family pension.

8. Learned counsel for the respondents further submitted that service documents in respect of the deceased soldier were destroyed on 05.09.2005 after preservation period of 25 years in terms of Para 595 (a) of Regulations for the Army, 1987, therefore, in the absence of relevant documents no decision can be taken at this stage. He pleaded for dismissal of O.A.

9. Heard Ms Hemlata, learned counsel for the petitioner and Mrs Anju Singh, learned counsel for the respondents and perused the material available on record.

10. It is not in dispute that service documents in respect of the deceased soldier were destroyed on 05.09.2005 after completion of retention period of 25 years in terms of Para 595 (a) of Regulations for the Army, 1987. Copy of Long Roll containing limited information is available on record as per which the deceased soldier No. 5441679 Sepoy Shri Ram was enrolled in the Army on 21.11.1963. He was discharged from service on 29.10.1966 at his own request on extreme compassionate grounds vide Part-II Order No. 163/15/66 without granting pensionary benefits. He died on 08.05.1967 at home. The deceased soldier was not granted service pension as he did not complete 15 years qualifying service for earning service pension in terms of Rule 132 of Pension Regulations for the Army, 1961 (Part-I), which for convenience sake is reproduced as under:-

*"132. The minimum period of qualifying service (without weightage) actually rendered and required for earning service pension shall be 15 years."*

11. As per Para 212 of Pension Regulations for the Army, 1961 (Part-I) and Army Instructions 51/80, family pension is granted to a widow/dependent of those soldiers who died either as a pensioner or while in service. Since the deceased soldier was not in receipt of any kind of pension, petitioner is not entitled to life time arrears of family pension in terms of ibid rules.

12. In the year 2002, after a gap of 25 years, petitioner's mother had approached Records, Assam Regiment for grant of family pension which request was turned down stating that since the deceased soldier was a non-pensioner, petitioner is not entitled to family pension. For convenience sake, copy of letter dated 05.09.2002 is reproduced as under:-

*"1. Refer to your letter No G4/Misc/Assam Regt/VII dated 08 Aug 2002 addressed to this office and copy endorsed to Smt Siva Rani, widow of the above named deceased soldier.*

*2. It is submitted that No 5441679 Ex Sep/WM Shri Ram was enrolled in 5 Gorkha Rifles on 21 Nov 1963 and transferred to Assam Regiment on 08 May 1964 and posted to 6 Assam on 10 Jul 1964. The individual was discharged from the service at his own request*

*on 29 Oct 1966 vide Army Rules 13 (3) III (iv) with his Army service of 02 years and 350 days. As per petitione dated 02 Apr 1996 (photocopy attached) of Smt Siva Rani, widow, the individual died on 08 May 1967.*

*3. Since, the deceased soldier had about 03 years of service only, the deceased was not granted service pension. Further, the deceased soldier was a non pensioner, his widow is not entitled for family pension. This aspect had already been communicated to Smt Siva Rani, widow by this office vide our letter No 2505/5441679/31/NER dated 25 May 1996 (photocopy attached). The case is finally closed."*

13. Petitioner's contention that the deceased soldier died on duty is unacceptable, as entry made in Long Roll clearly shows that he was discharged from service at his own request on extreme compassionate grounds on 29.10.1966 for which casualty was also notified vide Part-II Order No 163/15/66 and at the time of discharge he had rendered about 03 years service which is not sufficient for grant of pension.

14. During the course of hearing reliance has been made by the petitioner on order dated 28.10.2021 passed by this Tribunal in O.A. No. 139 of 2021, **Smt Birmo Devi W/o Late**



**EBR Prem Raj vs UOI & Ors.** We have perused the aforesaid order and we find that this order is not applicable in the present case as in that case applicant's husband was invalided out of service in low medical category.

15. In view of the fact that the deceased soldier was not in receipt of any kind of pension, his legal heirs are also not entitled to family pension/life time arrears of family pension.

16. The O.A. being devoid of merit is **dismissed**.

17. No order as to costs.

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

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

Dated:15.12.2023

*rathore*

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

RESERVED**(Court No 2)**

Form No. 4

**{See rule 11(1)}**  
**ORDER SHEET**

ARMED FORCES TRIBUNAL, REGIONAL BENCH,

LUCKNOW

TRANSFERRED APPLICATION NO 33 OF 2022

Soni Lal

**Petitioner**By Legal Practitioner for the **Petitioner**

Versus

Union of India &amp; Ors

**Respondents**

By Legal Practitioner for Respondents

Notes of the Registry	Orders of the Tribunal
	<p data-bbox="395 1442 536 1471"><u>15.12.2023</u></p> <p data-bbox="395 1476 1011 1509"><u>Hon'ble Mr. Justice Anil Kumar, Member (J)</u></p> <p data-bbox="395 1514 1011 1547"><u>Hon'ble Maj Gen Sanjay Singh, Member (A)</u></p> <p data-bbox="493 1615 778 1644"><b>Judgment pronounced.</b></p> <p data-bbox="493 1666 890 1695"><b>T. A. No. 33 of 2022 is dismissed.</b></p> <p data-bbox="493 1718 1299 1747">For orders, see our judgment and order passed on separate sheets.</p> <p data-bbox="413 1861 770 1924">(Maj Gen Sanjay Singh) Member (A)</p> <p data-bbox="395 1928 480 1957"><i>rathore</i></p> <p data-bbox="1099 1861 1402 1924">(Justice Anil Kumar) Member (J)</p>

