

Court No.1**ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 224 of 2021****Friday, this the 11th day of February, 2022****Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

Indu Tiwari

Mother of IC No. 72891A Maj Rishi Raj Tiwari

Wife of Anil Tiwari

R/o 21, Gul Mohal Vatika, Khandari Bye Pass Crossing,
Agra (UP), PIN-282005

..... Applicant

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

Versus

1. Union of India through Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. The Chief of Army Staff, Integrated Headquarters, Ministry of Defence, South Block III, Sena Bhawan, New Delhi – 110011.
3. Additional Directorate General of Manpower, (Policy & Planning)/MP5 (b), Adjutant General's Branch, Integrated Headquarters of Ministry of Defence (Army), Wing No. 3 Ground Floor West Block III, RK Puram, New Delhi – 110066.
4. PCDA (Pension), Draupadi Ghat, Allahabad (UP), PIN-211014.
5. Nitu Tiwari, Daughter of Vidya Sagar Khajuria, House No. 202, Kanha Green City, Shivaiya, NH-58, Delhi Hariddwar Road, Near UP Western Toll Plaza, Meerut (UP), PIN-250110.

..... Respondents

Ld. Counsel for the Respondent : **Ms. Amrita Chakraborty,**
Nos. 1 to 4 Central Govt CounselLd. Counsel for the Respondent : **Shri Sanjay Sharma Darmora**
No. 5 Advocate

ORDER

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 relief:-

“(I) Quash the order dated 14.01.2021 passed by OP No. 2, which is annexed as Annexure No.1 to this appeal.

(II) Direct the respondent to divide the special family pension equally between applicant and OP No. 5.

(III) Direct the respondent to provide the arrear of family pension from 14.11.2020 with interest 18% per annum from the date due till the actual date of realization of the aforesaid amount.

(IV) Pass the order of exemplary compensation for false prosecution and illegal imprisonment, in the interest of justice.

(V) Pass any order which this Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case in favour of the petitioner, in the interest of justice.

(VI) Allow the Original Application with exemplary cost.”

2. The factual matrix of the case is that applicant's son (Major Rishi Raj Tiwari) was commissioned in the Army on 12.12.2009 and died on 13.11.2020 due to “Myocardial Insufficiency and Coronary Artery Disease”. The death of the officer was classified as “Physical Casualty”. The Court of Inquiry has opined the death of son of the applicant as ‘Attributable to military service’ but it was considered as neither attributable to nor aggravated by service by the competent authority. Accordingly, Smt. Nitu Tiwari (Wife) being NOK was issued PPO No. 131202100181-3000 granting

Ordinary Family Pension. Smt Indu Tiwari, mother of Maj Rishi Raj Tiwari submitted a petition dated 08.12.2020 requesting stoppage of payment of pensionary benefits to wife which was suitably replied by AG's Branch, MP-5 vide letter dated 14.01.2021. As per para 68 (a) of Pension Regulations for the Army, 2008 (Part-1), the ordinary family pension shall not be payable to more than one member of the family at the same time. Accordingly, Ordinary Family Pension being paid to wife of the deceased officer was not divided between wife and the applicant. Being aggrieved, the applicant has filed the present Original Application for division of special family pension between wife and her.

3. Learned counsel for the applicant submitted that applicant is mother of Late Maj Rishi Raj Tiwari who died while on duty on 13.11.2020 due to "Myocardial Insufficiency and Coronary Artery disease". The applicant and her husband were totally dependent upon her son for day to day need and he was looking after the applicant and her husband for day to day basic need required for livelihood. The son of the applicant was married to OP No. 5 on 18.02.2015 who is a practicing Doctor and during the life time of his son she used to mentally torture her. OP No. 5 is living with her parents since 23.08.2018 without any reason. The applicant submitted an application dated 08.12.2020 to stay any payment to wife of his late son. When no heed on the aforesaid application paid by the respondents then she again sent a reminder dated 29.12.2020 but no action has been taken by the respondents. The applicant was made nominee by his son in his service documents

therefore, she received 50% of AGI claim and rest was given to OP No. 5. The applicant is entitled for 50% of special family pension but the respondent illegally rejected the claim of applicant vide order dated 14.01.2021.

4. Learned counsel for the applicant further submitted that applicant's case is similar in nature to AFT (RB) Kolkata judgment in O.A. No. 43 of 2015 **Smt. Chhayya Mallik vs. Union of India & Ors**, decided on 12.04.2016 by which special family pension was divided equally between wife and mother as per Regulation 215 of Pension Regulations for the Army, 1961. He pleaded for division of 50% special family pension between wife and applicant.

5. Learned counsel for the respondent Nos. 1 to 4 submitted that applicant's son was commissioned in the Army on 12.12.2009 and died on 13.11.2020 due to "Myocardial Insufficiency and Coronary Artery Disease". The death of the officer was classified as "Physical Casualty". The Court of Inquiry has opined the death of son of the applicant as 'Attributable to military service' but it was considered as neither attributable to nor aggravated by service by the competent authority. Accordingly, Smt. Nitu Tiwari (Wife) being NOK was issued PPO No. 131202100181-3000 granting Ordinary Family Pension. Smt Indu Tiwari, mother of Maj Rishi Raj Tiwari submitted a petition dated 08.12.2020 requesting stoppage of payment of pensionary benefits to wife which was suitably replied by AG's Branch, MP-5 vide letter dated 14.01.2021.

6. Learned counsel for the respondent Nos. 1 to 4 further submitted that applicant is praying for division of special family

pension whereas in the present case wife of the deceased officer has been granted ordinary family pension which cannot be divided as per rules. Though, special family pension may be divided between mother and wife as per Pension Regulations, as prayed by the applicant relying on **Smt. Chhayya Malik** (supra) case but since, the present case pertains to ordinary family pension, hence, as per Para 68 (a) of Pension Regulations for the Army, 2008 (Part-1), "***the ordinary family pension shall not be payable to more than one member of the family at the same time***", hence, division of ordinary family pension between wife and applicant is not permissible as per rules. She pleaded for dismissal of O.A.

7. We have heard learned counsel for the parties and have perused the record.

8. We have given our earnest consideration to the submissions of the learned counsel for the parties and find that wife of the deceased officer was granted ordinary family pension and not special family pension and division of ordinary family pension between wife and the applicant is against the settled law as per Para 68 (a) of Pension Regulations for the Army, 2008 and it cannot be paid to more than one member of the family at the same time, hence, applicant is not entitled to relief prayed by her.

9. We also find that applicant's claim for division of Ordinary Family Pension has rightly been rejected by the respondents as per rule, which needs no interference.

10. In view of above, we are of the opinion that O.A. is devoid of merit, deserves to be dismissed and is accordingly, **dismissed**.

11. No order as to costs.

12. Pending Misc. Application(s), if any, shall be treated to have been disposed off.

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

Dated: February, 2022
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