

RESERVED
Court No. 2

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

ORIGINAL APPLICATION No. 860 of 2022

Thursday, this the 25th day of January, 2024

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

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

1. Shri Chandra Bhan Singh,
S/o Nanhu Ram
Father of No. 3199329F Sep/Late Gitam Singh
R/o Village – Sunrakh, PO – Brandavan,
District – Mathura (UP) – 281121
 2. Aman Singh,
Son of Late Smt. Mamta & Late Gitam Singh
C/o Shri Chandra Bhan Singh (Grand Father)
R/o Village – Sunrakh, PO – Brandavan,
District – Mathura (UP) – 281121
 3. Yogyata Singh,
Daughter of Late Smt. Mamta & Late Gitam Singh
C/o Shri Chandra Bhan Singh (Grand Father)
R/o Village – Sunrakh, PO – Brandavan,
District – Mathura (UP) – 281121
 4. Archana Singh,
Daughter of Late Smt. Mamta & Late Gitam Singh
C/o Shri Chandra Bhan Singh (Grand Father)
R/o Village – Sunrakh, PO – Brandavan,
District – Mathura (UP) – 281121
- Applicants

Counsel for the Applicants : **Shri Veer Raghav Chaubey**, Advocate

Versus

1. Union of India, through Secretary, Ministry of Defence,
Government of India, South Block, New Delhi-110011.
2. Office of the PCDA (P), Draupadi Ghat, Allahabad.
3. Officer-in-Charge, Records, JAT Records, PIN-900496, C/o 56
APO.

4. Chanchal, wife of late Geetam Singh, daughter of Suresh, Village – Sunrakh, Thana Brandavan, District Mathura (UP).

.....Respondents

Counsel for the Respondents : **Ms. Prerna Singh**, Advocate
Central Govt. Counsel

ORDER

1. The instant Original Application has been filed by the applicant No. 1 under Section 14 of the Armed Forces Tribunal Act, 2007 with the following prayers:

- “(i) *This Hon’ble Tribunal may kindly be pleased to direct the opposite parties to grant the family pension and other consequential benefits in 06 parts applicant, Aman Singh (1st wife son), Yogita Singh (1st wife daughter), Archana (1st wife daughter), respondent no. 4 Chanchal & her son Gaurav regarding the Army Regulation 71(b) of Pension Regulations 2008 (Part 1).*
- (ii) *Pass any other order or direction which this Hon’ble Tribunal may deem fit and proper under the circumstances of the case.”*

2. This O.A. was filed by the applicant No. 1, but subsequently vide orders dated 16.12.2022 and 30.01.2023, names of 2nd, 3rd and 4th applicants have been impleaded in the Original Application.

3. Facts giving rise to Original Application in brief are that son of the applicant No. 1, Ex Sepoy Late Gitam Singh was enrolled in the Army on 21.02.2003 and was discharged from service on 29.02.2020 under Rule 13 (3) I (ii) (a) (i) of the Army Rules, 1954 after completion of terms of engagement. After discharge from service, he was granted service pension vide PPO dated 20.01.2020. During the course of service the deceased soldier was married to Smt. Mamta on 08.11.2006. Three children (Aman, Yogyata & Archana, Applicant No.

2,3 & 4 respectively) were born from this wedlock and she died on 11.12.2010. Thereafter, late Sepoy Gitam Singh married to Smt. Chanchal on 12.06.2012 and she is blessed with one child Gaurav. The applicant's son died on 09.05.2022. Smt. Chanchal being legally wedded wife of the deceased soldier became eligible for family pension. The applicant sent many applications to the respondents stating therein that family pension be divided in equal share between children of first wife of the deceased soldier and second wife but no fruitful result came out with regard to division of family pension. Being aggrieved, the applicant has filed this Original Application.

4. Learned counsel for the applicants submitted that son of the applicant No. 1 was enrolled in the Indian Army on 21.02.2003 and discharged on 29.02.2020 after rendering 16 years of service for which he was granted service pension. The deceased soldier was firstly married to Smt. Mamta on 01.05.2005 who died on 01.12.2010. Prior to death, she gave birth to three children namely, Aman (son), Yogyata and Archana (Daughters). Thereafter, applicant's son remarried to Smt. Chanchal on 12.06.2012 who gave birth to Gaurav (son). The behavior of second wife Smt. Chanchal towards children of 1st wife was not supportive and she was not looking after the children properly. The son of the applicant No. 1, Sepoy Gitam Singh died on 09.05.2022. After demise of his son applicant No. 1, on 02.06.2022 submitted a representation to the respondents for division of family pension in six parts, i.e. applicant, three children of first wife, second wife and her son Gaurav as per Regulation 71(b) of Pension

Regulations for the Army, 2008 (Para-1). The representation of the applicant No. 1 was not considered by the competent authority, hence, applicant No. 1 submitted another representations dated 04.07.2022 and 15.07.2022 but nothing has been done by the respondents.

5. Learned counsel for the applicants further submitted that applicant No. 1 is very old and due to non grant of family pension and having no other source of income to look after children of his deceased son, he is facing financial hardships and mental agony. Hence, non grant of family pension to the children of first wife of his son is violative of Articles 14 and 21 of the Constitution of India. He pleaded for early division of family pension and release of 50% share of family pension in favour of children of the first wife.

6. On the other hand, learned counsel for the respondents submitted that son of the applicant No. 1, Ex Sepoy Late Gitam Singh was enrolled in the Army on 21.02.2003 and discharged from service on 29.02.2020 under Rule 13 (3) I (ii) (a) (i) of the Army Rules, 1954. He was granted service pension vide PPO dated 20.01.2020. Son of the applicant No. 1 was married to Smt. Mamta on 08.11.2006 and two children Aman Choudhary (Son) and Miss Yogyata Singh (Daughter) were born from the first wife. Later, Smt Mamta died on 11.12.2010. Thereafter, son of the applicant No. 1 married to Smt. Chanchal on 12.06.2012 and she is blessed with one child Gaurav. The son of the applicant No. 1 died on 09.05.2022. After death of son of the applicant No. 1, Smt. Chanchal being legally wedded wife of the deceased soldier became eligible for grant of family pension and the

same was notified by the PCDA (P) Allahabad vide PPO dated 20.01.2020. The applicant No. 1 sent an application dated 03.06.2022 for division of family pension between children of first wife and second wife. Thereafter, applicant No. 1 sent another application dated 23.06.2022 for division of family pension and publication of birth Part-II Order in respect of first wife's daughter namely Kumari Archana, as her name was not recorded in the service documents of the deceased soldier. In reply dated 07.07.2022, respondents asked the applicant No. 1 to provide some documents for publication of birth Part-II Order and to issue family pension claim in favour of eldest son/daughter. Thereafter, applicant served online grievance on 08.07.2022 for grant of family pension and other retiral benefits which was replied by the JAT Records vide letter dated 13.07.2022. In the meantime, Smt. Chanchal, widow of the deceased soldier sent an application dated 18.07.2022 alongwith death certificate of her husband for grant of family pension which was replied by the Record Office to contact PDA of her husband for release of family pension as it has already been notified in PPO dated 20.01.2020. In reply to personal application dated 04.07.2022 of the applicant No. 1, he was informed by the Record Office to complete and return four sets of family pension booklets in respect of twin children for equal shares of ordinary family pension alongwith other required documents, through Zila Sainik Welfare Office.

7. Learned counsel for the respondents further submitted that Zila Sainik Welfare Office, Mathura also investigated the matter and

forwarded investigation report to Records, The Jat Regiment vide letter dated 30.08.2022 mentioning therein that Late Sep Gitam Singh had married to Mamta Devi who was blessed with three children (Aman Singh (son), Kumari Yogyata and Kumari Archana (daughters) and after death of Mamta Devi, Sep Gitam Singh remarried with Smt. Chanchal who was blessed with one son (Gaurav). In the investigation report of Zila Sainik Welfare Office, Mathura it was also mentioned that Smt. Chanchal is not residing in her matrimonial home and residing separately with another person as mentioned in the statement of the applicant No. 1.

8. Learned counsel for the respondents further submitted that as per Para 70 of the Pension Regulations for the Army, 2008 (Part-1), parents may be granted ordinary family pension for life when the deceased had left behind neither a widow nor child. However, as per para 71 of the Pension Regulations for the Army, 2008 (Part-1), if service personal leave behind two or more widows who are eligible for ordinary family pension, the pension shall be divided amongst them in equal share. On the death of widow, her share of ordinary family pension shall become payable to her eligible child. Therefore, to process the case for division of ordinary family pension to PCDA (P) Prayagraj, documents as asked by the Records vide letter dated 30.07.2022 are mandatory requirement and hence, there is delay on the part of applicants to provide necessary required documents to process the case for division of ordinary family pension between

children of first wife (Smt. Mamta Devi) and Smt. Chanchal (second wife & widow).

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

10. In this case, notice was issued to respondent No. 4, Smt. Chanchal on 09.08.2023 which was received unserved with remarks that she is not residing at the given address. Thereafter, another notice was sent to respondent No. 4, Smt. Chanchal on 05.10.2023 which has not been received back served/unserved, therefore, after lapse of 30 days, service of notice is deemed to be sufficient and hence, case is proceeded ex-parte against respondent No. 4.

11. Regulation 71 of the Pension Regulations for the Army, 2008 (Part-1), being relevant is reproduced as under :-

“DIVISION OF ORDINARY FAMILY PENSION

71. (a) If service personnel leave behind two or more widows who are eligible for an ordinary family pension, the pension shall be divided amongst them in equal share. On the death of widow, her share of ordinary family pension shall become payable to her eligible child.

Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal share, or if there is only one such other widow, in full to her.

(b) Where a deceased is survived by a widow and has also left behind eligible child/children from another wife who is not alive, the eligible child of the deceased wife shall be entitled to the share of ordinary family pension which the mother would have received if she had been alive at the time of death of the service personnel/pensioner.

Provided that the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full to such widow or child.

(c) Where the deceased is survived by a widow but has left behind eligible child/children from a divorced wife or wives, the eligible child or children shall be entitled to the share of family

pension which the mother would have received at the time of the death of the service personnel had she not been so divorced.

Provided that the share or shares of family pension payable to such a child or children or to a widow or widows ceasing to be payable, such share or shares shall not lapse but shall be payable to the other widow or widows and or to other child or children otherwise eligible, in equal shares, or if there is only one widow or child, in full, to such widow or child.

Note: *Children born out of void marriage in terms of Section 11 of Hindu Marriage Act, 1955 shall be entitled to share of the ordinary family pension, if otherwise admissible, though their mother would not have been eligible for the same, had she been alive at the time of death of her husband, on account of her marriage being null and void under the above said Section”.*

12. In the instant case, it is established by the investigation report of the Zila Sainik Welfare Office, Mathura that Aman Singh, Yogyata Singh (twin children) and Archana Singh are legitimate children of first wife, Smt. Mamta Devi and Smt. Chanchal is second wife and widow of late Sep Gitam Singh having one son, Gaurav. It is also mentioned in the report that Smt. Chanchal is not residing in her matrimonial house. Hence, as averred by the applicant No. 1, all three children born to first wife are being looked after by father of the deceased soldier and they are living and being looked after in their parental house whereas second wife, Smt. Chanchal is living separately at other place and she is not having good relation neither with father of her deceased husband nor with children of first wife late Smt. Mamta Devi.

13. In the circumstances mentioned above, it will be just and proper to divide ordinary family pension between eldest eligible minor child of first wife (Aman Singh) and Smt. Chanchal (second wife) in equal share of 50% each as per Para 71 of the Pension Regulations for the Army, 2008 (Part-1). Since father of the deceased soldier is

looking after all three children of first wife, therefore, he may be given guardianship to look after all three children of first wife from 50% share of ordinary family pension to be paid to Aman Singh (minor son of first wife).

14. In order to pay 50% share of ordinary family pension to Aman Singh (minor son of first wife), applicant No. 1 is directed to provide necessary documents to the respondents, as required, to process pension claim of Aman Singh and for issuance of necessary PPO in his favour. Since, name of Smt. Chanchal (second wife) is already recorded in the PPO issued to late Sep Gitam Singh, necessary action to pay 50% share of ordinary family pension in her favour be also taken by the respondents accordingly.

15. In view of above, Original Application is liable to be allowed partly and is **allowed partly**. The respondents are directed to grant 50% share of ordinary family pension to the applicant Aman Singh and rest 50% share to respondent No. 4, Smt. Chanchal (second wife) and issue PPO accordingly. The applicant No. 1 is directed to provide necessary documents to the respondents within a month from the date of receipt of a certified copy of this order for processing pension claim of Aman Singh (minor son of first wife) and for issuance of necessary PPO in his favour. The arrears of pension due from the next date of death of the deceased solider shall be paid equally between Aman Singh and Smt Chanchal. The respondents are directed to give effect to this order within five months from the date of receipt of a copy of

this order. Default will invite interest @ 8% per annum till actual payment.

16. No order as to cost.

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

(Maj Gen Sanjay Singh)
Member (A)

Dated: January, 2024
SB/rathore

(Justice Anil Kumar)
Member (J)