

**E-Court No. 1****ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW****Original Application No. 628 of 2020**

Thursday, this the 22<sup>nd</sup> day of July, 2021

**Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)**  
**Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)**

1. Smt Asha Devi, mother of Ex Sigmn late Kapil Kumar (Army No 15722091), W/O Virender Singh R/O H No. 527, Awas Vikash Budhi Vihar, Sector-10, Majhola, Dist-Moradabad, Uttar Pradesh, Pin-244103.
2. Virender Singh, father of Ex Sigmn late Kapil Kumar (Army No 15722091), W/O Virender Singh R/O H No. 527, Awas Vikash Budhi Vihar, Sector-10, Majhola, Dist-Moradabad, Uttar Pradesh, Pin-244103.

.... **Applicants**

Ld. Counsel for the: **Shri Pushpendra Kumar Dhaka, Advocate**  
Applicant

Versus

1. Union of India, Through Secretary, Ministry of Defence, New Delhi-110011.
2. The Chief of the Army Staff, COAS Secretariat, IHQ (Army) South Block New Delhi-110011.
3. Senior Record Officer, Corps of Signals, Pachpedi, Vidya Nagar, Jabalpur, Madhya Pradesh-482001.
4. Principal Controller of Defence Accts, Draupadi Ghat, Near, Sadar Bazar, Prayagraj, Uttar Pradesh-211014.

... **Respondents**

Ld. Counsel for the: **Shri Pushpendra Mishra, Advocate**  
Respondents Central Govt Counsel.

**ORDER (Oral)**

1. By means of this O.A. applicant Smt Asha Devi, mother of Ex Sigm late Kapil Kumar (Army No 15722091) has claimed Ordinary Family Pension which is presently being paid to Smt Anjali Devi (wife of deceased soldier) who left her matrimonial house and got married with Shri Manoj Kumar on 08.06.2019. The applicant has made following prayers:-

*(i) The Hon'ble AFT may please set aside the Impugned Order dated 08.07.2020 and grant ordinary family pension to the appellant with effect from 10.07.2019 with arrears.*

*(ii) Grant any relief to the applicant as the honourable Court may deem fit.*

2. Admittedly the applicant's son was enrolled in Indian Army on 20.09.2010. During course of service while on 33 days balance of annual leave for the period 29.04.2013 to 31.05.2013, on 05.05.2013 he got married with Kumari Anjali and later met with a road accident on 24.05.2013 in which he died during treatment at Army Hospital (Research and Referral). Since Part-II Order for marriage was not published, it was later published on 02.12.2013 and Smt Anjali Devi was declared as NOK of the deceased soldier. She is in receipt of Ordinary Family Pension vide PPO No F/NA/20986/2014. It is alleged that Smt Anjali Devi did not support her in-laws after death of her husband and in the year 2019 she left the matrimonial house and got married to Shri Manoj Kumar on 08.06.2019 and since then she is living as a member of another family having no relation with her previous in-laws. On 31.12.2019 applicant No 1 wrote to Records Signals for division of family pension but she was denied vide communication dated 12.02.2020. Thereafter, legal notice issued on

08.06.2020 was also replied vide letter dated 08.07.2020 intimating applicant about non division of family pension owing to policy constraints. Hence this O.A. has been filed for grant of Ordinary Family Pension.

3. Learned counsel for the applicants submitted that applicant No 1 is a poor lady whose husband is suffering from life threatening diseases like Tuberculosis and lung ailments. He further submitted that applicant No 1 being an unemployed lady is a daily wages worker to meet her needs. Further submission of learned counsel for the applicant No 1 is that since applicant and her husband were fully dependent on their deceased son therefore, denial of pension is arbitrary in the eyes of law. Applicants' learned counsel pleaded that applicant No 1 be granted family pension.

4. Per contra, submission of learned counsel for the respondents is that applicants' son while serving with 572 Sub Group (ASCON) met with a road accident on 24.05.2013 and succumbed to injuries at Army Hospital (Research & Referral), New Delhi on 26.05.2013. He further submitted that as per norms, Ordinary Family Pension was sanctioned and paid to Smt Anjali Devi, Next of Kin (NOK-wife) and Death-cum-Retirement Gratuity (DCRG) was paid to Smt Asha Devi, mother of the deceased soldier. Learned counsel for the respondents further contended that in terms of Govt of India, Min of Defence policy letter dated 06.01.2011 and PCDA (P), Prayagraj Circular No 479 dated 17.02.2012 a childless widow of a deceased soldier shall continue to be paid Ordinary Family Pension even after her re-marriage. His submission is that since the deceased soldier's widow is childless, she is entitled to receive Ordinary Family Pension even though she got re-married with Shri Manoj Kumar on 08.06.2019. His other

submission is that Smt Asha Devi is not eligible for Ordinary Family Pension in accordance with para 70 of Pension Regulations for the Army, Part I (2008) as the deceased soldier has left behind a childless widow. He pleaded for dismissal of O.A. in terms of aforesaid regulations.

5. We have heard the learned counsel for the parties and perused the records.

6. Admittedly, the deceased soldier's widow Smt Anjali Devi, due to being next of kin, is entitled for receiving the Ordinary Family Pension. The sole question that arises for our consideration is whether the widow on remarriage becomes ineligible to continue to draw the Ordinary Family Pension. If it is answered affirmatively, the widow's Ordinary Family Pension must be discarded and in her place mother of the deceased Smt Asha Devi, the applicant, being the second heir, will be entitled to the Ordinary Family Pension. We shall find out the answer of the aforesaid question.

7. Since the applicants' son died on 26.05.2013 after the Pension Regulations for the Army, 2008 became applicable (i.e. 'New Pension Regulations'), therefore, the present matter should be governed by the new Regulations. As per Regulation 63 of the new Regulations, Ordinary Family Pension is payable to the family of the deceased. Regulation 66 defines 'family', which consists of four categories i.e. wife/husband, judicially separated wife/husband, unmarried daughters/unmarried sons and parents wholly dependent on the service personnel when the deceased soldier was alive. In this way, the widow seems to be entitled Ordinary Family Pension and has preference over the parents. If there is no widow and no child, the parents are entitled to the Ordinary Family Pension. Regulation 67 of the

new Regulations deals with the period for which Ordinary Family Pension is payable, according to this provision, the Ordinary Family Pension in the case of a widow or widower is payable upto the date of his or her death or marriage, whichever is earlier. The said Regulation 67, being relevant, is reproduced as follows:

*“67. The period for which ordinary family pension is payable shall be as follows:*

*(i) In case of a widow or widower upto the date of death or marriage, whichever is earlier.*

*(ii) In the case of eligible unmarried son, till he attains the age of 25 years or upto the date of his marriage, whichever is earlier and subject to income criteria as given in Note-2 below:*

*(iii) In the case of eligible daughter, till she attains the age of 25 years or upto the date of her marriage, whichever is earlier and subject to income criteria is given in Note-2 below:*

*1. Provided that a unmarried daughter above the age of 25 years, a widowed/divorced daughter irrespective of her age and son or daughter who is suffering from any disorder or disability of mind including mentally retarded or physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of 25 years, the family pension shall be payable to such son or daughter for life.*

*Notes: 1. Eligible son/daughter including widowed/divorced daughter shall furnish to his Pension Disbursing Authority a half yearly certificate in regard to marital status.*

*2. Eligible son/daughter including widowed/divorced daughter shall be paid ordinary family pension if his/her earning is not more than Rs.2550/- per month from all sources including pay and or pension. He will also submit annually a certificate to the effect that his earning is not more than Rs.2550/- per month to his Pension Disbursing Authority.”*

8. Since the deceased soldier died issueless, the provisions pertaining to children contained in Regulations 66 and 67 of the new Regulations are not relevant. Apparently as per Regulation 67, Smt Anjali Devi (widow) is entitled to Ordinary Family Pension till the date of her remarriage.

9. Thus, the new Regulations have laid down a clear cut guideline that the Ordinary Family Pension shall first be paid to the widow, but she will be disqualified as per Regulation 67 (i) of the aforesaid Regulations to receive the same if she marries again. Consequently, the remarriage of the widow debars her to receive ordinary family pension. We have already indicated that the applicant No 1, being the second heir, is entitled to the Ordinary Family Pension w.e.f. the date of remarriage of Smt Anjali Devi, subject to the condition that she (mother of the deceased) is wholly dependent on the deceased soldier during his life time and her income as per the Regulation 70 of the new Regulations is not more than Rs.2,550/- per month from all sources.

10. Further, on the point of re-marriage of deceased soldier's widow, learned counsel for the respondents contended in para 12 of counter affidavit that as per policy framed by Govt of India, Ministry of Defence letter dated 12.11.2008 and PCDA (P) Circular No 479 dated 17.02.2012, remarriage is no disqualification to deny Ordinary Family Pension to the deceased soldier's widow. The said letter and circular have, thus, allowed grant of Ordinary Family Pension even after remarriage.

11. We are also clear that widow of the deceased soldier got remarried with Shri Manoj Kumar on 08.06.2019 and is residing with her new husband as a separate family having no relation with deceased soldier's parents. In such circumstances it can be inferred that the provisions of Regulation 67 (i)

of the new Regulations have a genuine purpose behind its enforcement, which appears to be more reasonable and proper.

12. Apparently Regulation 67 (i) of the new Regulations, the Government letter dated 06.01.2011 and Circular No 479 dated 17.02.2012 are in conflict with each other. The said letter and circular empower the widow to continue to draw Ordinary Family Pension even after remarriage, but the aforesaid Regulation permits her to receive the Ordinary Family Pension only up to the date of her remarriage. We have; therefore, to see as to which of these two documents will prevail.

13. With regard to issuance of Govt letter dated 06.01.2011 and Circular No 479 dated 17.02.2012 on continuance of pension to a widow even after remarriage, it is quite relevant to state that the new Regulations have been framed by the Central Government in exercise of the powers conferred by Section 192 of the Army Act, 1950. The Regulations have, therefore, statutory character having force of law like an enactment made by the Parliament. The Government letter dated 06.01.2011 and Circular No 479 dated 17.02.2012 are merely executive instructions, so in our view, the statutory instrument, i.e. the new Regulations, cannot be superseded in any way by executive orders. If the respondents had any intention to provide the benefit of Ordinary Family Pension to the widow even after her remarriage, they should have, in that eventuality, amended the aforesaid Regulation 67 instead of superseding the same expressly by issuing executive orders. It is well settled that no executive order or instruction can override any statutory instrument having the force of law. So, the aforesaid Government letter and the Circular cannot be applied in supersession of the provisions of the

Regulations having the force of law. It is also worthwhile to mention that the provisions of old Regulations are almost synonymous to the new Regulations, so far as the provision with regard to the disqualification of the widow to receive the ordinary family pension after the remarriage is concerned. In this connection Regulation 219 (iii) of the old Regulations is relevant, which provides that the widow, who has not remarried, is entitled to ordinary family pension. There is, however, one exception to this provision that if a widow remarries to her deceased husband's brother and continues to live a communal life and contributes to the support other living eligible heirs, she will continue to draw family pension notwithstanding her remarriage. The new Regulations have modified this policy of providing family pension to the widow, if she remarried to her deceased husband's brother and have made the remarriage of the widow as one of the disqualifications to draw ordinary family pension.

14. In support of his contention, learned counsel for the applicant has relied upon judgment dated 22.07.2014 delivered by AFT, Regional Bench, Kochi in O.A. No. 10 of 2014 titled **Smt Santhakumari K vs Union of India & Ors.** We have perused the aforesaid judgment and are of the view that the case in hand has weightage in view of aforesaid judgment.

15. In view of the above, we are of the view that the applicant Smt Asha Devi, who was dependent on the deceased soldier during his life time, is entitled to receive Ordinary Family Pension w.e.f. the date of remarriage i.e. 08.06.2019 in respect of Smt Anjali Devi. Ordinary Family Pension payable to Smt Anjali Devi is liable to be stopped with effect from the same date.

16. The Original Application is **allowed**. Impugned order dated 08.07.2020 is set aside. The respondents are directed to sanction and pay the Ordinary Family Pension to the applicant No 1, who is mother of the deceased soldier, with effect from the date of remarriage i.e. 08.06.2019 in respect of Smt Anjali Devi who is residing separately with her new husband Shri Manoj Kumar. Respondents are further directed to issue necessary orders within three months from the date of receipt of this order. Default will invite interest @ 6% p.a.

17. No order as to cost.

18. Pending applications, if any, are disposed off accordingly.

**(Vice Admiral Abhay Raghunath Karve)**  
**Member (A)**

**(Justice Umesh Chandra Srivastava)**  
**Member (J)**

Dated: 22.07.2021  
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