

**ARMED FORCES TRIBUNAL, REGIONAL BENCH,  
LUCKNOW  
(CIRCUIT BENCH AT NAINITAL)**

**ORIGINAL APPLICATION No. 706 of 2021**

**Wednesday this the 01<sup>st</sup> day of June, 2022**

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

Smt Usha Devi (Mother of Late L/Nk No. 7785641P, Deepak Singh, W/o Suresh Chand, R/o Village – Charba, PO- Charba Via Sahaspur, Tehsil – Vikas Nagar, District- Dehradun.

**..... Applicant**

Learned counsel for the Applicant : **Shri Kishore Rai, Advocate.**

Versus

1. Union of India, through the Secretary, Ministry of Defence, Central Civil Secretariat, New Delhi.
2. Commanding Officer, 16 Corps Provost Unit, PIN-908518, C/o 56 APO.
3. Senior Record Officer, Sena Police Corps Abhilekh Karyalaya Corps of Military Police Records, PIN-900493, C/o 56 APO.
4. The PCDA (Pensions) G- 04 Section, Allahabad (U.P.)

**.....Respondents**

Learned counsel for the Respondents. : **Shri Rajesh Sharma,  
Central Govt. Counsel**

**ORDER**

**“Per Hon’ble Mr. Justice Umesh Chandra Srivastava, Member (J)”**

1. The instant Original Application has been filed under Section 14 of the Armed Forces Tribunal Act, 2007 for the following reliefs:-

- (i) *The Hon’ble Tribunal may graciously be pleased to direct the respondents to grant the ordinary family pension to the applicant wef the date of death of her son i.e. 12.08.2015 along with the arrears.*
- (ii) *To call upon the records pertains to the son the applicant for computation of the ordinary family pension to the applicant.*
- (iii) *To pass such other suitable order be deemed fit and proper in the facts and circumstances of the case may also kindly be passed to meet the interest of justice.*

2. Brief facts of the case are that the son of the applicant Late L/Nk Deepak Singh was enrolled in the Army on 26.09.2012. He was posted at 16 Corps Provost Unit in field area at J&K. On 12.08.2015 at night while he was on duty, he sustained head injury and died. His death was considered as neither attributable to nor aggravated by military service. Applicant preferred claim for grant of family pension which was rejected vide letter dated 13.12.2016 on the ground that income of the applicant’s husband Suresh Chand is Rs. 16,034/- per month, hence she is not entitled for grant of family pension.

Being aggrieved, applicant has filed instant O.A. for grant of family pension.

3. Learned counsel for the applicant submitted that applicant's son was unmarried. He nominated applicant as his dependent. Her son while posted in field area at J & K met with an accident and died on 12.08.2015. Death of her son was considered as neither attributable to nor aggravated by military service. Applicant was paid Rs. 30,71,003/- on account of AFPP Fund, Ex Gratia Fund, AGI Benefits, Death Benefits and Death cum Retirement Gratuity. Applicant preferred claim for grant of family pension which was denied by the respondents on the ground that she is not dependent on his son as her husband's income is Rs. 16,034/- per month. Learned counsel for the applicant pleaded that in similar matter various Courts/ Tribunals have granted family pension, hence, directions be issued to the respondents to release family pension so that her family may survive.

4. On the other hand, learned counsel for the respondents submitted that son of the applicant was enrolled in the army in the years 2011. He met with an accident and died on 12.08.2015 due to head injury. A Court of Inquiry was held and

death of the applicant was considered as neither attributable to nor aggravated by military service. After death of her son, applicant was granted all her dues i.e. AFPP Fund, Ex Gratia Fund, AGI Benefits, Death Benefits and Death cum Retirement Gratuity. Claim of the applicant for grant of family pension was rejected on the ground that the applicant cannot be granted Ordinary Family Pension as her husband's income being an ex-serviceman having a pensionable income is Rs. 16,034/- per month which is more than permissible limit to grant ordinary family pension. Accordingly, only retiral dues were granted to the applicant. Learned counsel for the respondents further submitted that as per para 11.2 of Govt. of India, Min of Def letter dated 11.11.2008, the dependency criteria for the purpose of family pension shall be the minimum family pension along with dearness relief thereon. As per Circular No 516 dated 06 November 2013 only family pension is exempted from income for grant of ordinary family pension and nondependent parents are not entitled for family pension. In the instant case the father of the deceased himself is a pensioner. Joint income of Smt Usha Devi and Shri Suresh Chand (Parents) was Rs. 16,034/- per month during submission of Ordinary Family Pension claim i.e. year 2015 whereas as per Table 2 (Family Pension) of Annexure – III as referred to at Para 16.3 of Min of

Def letter dated 11.11.2008, the minimum rates of ordinary family pension of the rank of Rifleman is fixed @ Rs. 3500/- per month. Learned counsel for the respondents prayed that instant O.A. lacks substance and is liable to be dismissed.

5. We have heard learned counsel for the parties and perused the material placed on record. The question before us to decide is “whether applicant is entitled to grant of Family Pension upon the death of her son.”?

6. In the instant case, the son of the applicant died due to head injury in field area at J&K. The deceased was a bachelor at the time of his death. Claim of the applicant for grant was rejected on the plea that the applicant’s income was Rs. 16,034/- per month and she was not depend on her son. It is undisputed fact that mother of the deceased soldier was a house wife.

7. Son of the applicant died while in service. The NOK/family are normally eligible for grant of family pension, in terms of Govt of India letter dated 26.08.1998 as amended from time to time. Regulation 70 of Pension Regulations for the Army (Part-I) 2008, specifies the grant of family pension to parents who were wholly dependent on the service personnel when he was

alive, provided the deceased had left behind neither a widow nor child may be granted ordinary family pension for life at normal rate as admissible under Regulation 64(a) of these Regulations subject to the condition that their earnings are not more than Rs. 35,00/- + D.A. per month from all sources including pay, pension or self employment. This income limit was fixed in Vth Central Pay Commission and it has not been revised even though the Govt had implemented VI Central Pay Commission with effect from 01.01.2006. Applicant's son died during the period of VI Central Pay Commission effective from 01.01.2006. Amount of Rs. 3500/- + D.A. is far too less and placing an income limit for Ordinary Family Pension only and not other types of family pensions is discriminatory. Learned counsel for the applicant placed reliance on the Judgements of Armed Forces Tribunal Kochi Bench i.e. O.A. No 68 of 2014, Radha P Vs Union of India Ors decided on 01.10.2014 and O.A. No 66 of 2015, PP Mani Vs Union of India & Ors decided on 01.01.2016. Regarding eligibility criteria of the applicant for grant of Ordinary Family Pension irrespective of Income ceiling limit, the applicant has placed reliance upon the judgements of Hon'ble Apex Court in the case of DS Nakara & Ors Vs Union of India (1983) 1 SCC 305 and High Court of Punjab & Haryana in the case of Kartar Kaur & anr. Vs Union of India & Ors.

9CWP No 19665/2009 and various Govt Instructions on the subject. In the case of Kartar Kaur & anr., Vs UoI & Ors, the Hon'ble High Court of Punjab and Haryana, while referring to an earlier decision of its Division bench in the case of Ishwanti Devi Vs Union of India CWP No 11462/2006 had held that placing income criteria only for Ordinary Family Pension is clearly discriminatory and further held that the NOK/ Family are eligible for Ordinary Family Pension irrespective of the income. The said decision was followed by AFT, Kochi Bench in the order passed in O.A. No 66 of 2015 decided on 01.01.2016 and AFT, Chennai in O.A. No 55 of 2015, Smt T Poongodi vs. Union of India decided on 04.11.2016.

8. The existing rules which apply for the grant of a gratuity or retiral due shall also apply for grant of an Ordinary Family Pension. The rule and regulations are guidelines and must be judiciously applied and implemented, keeping in mind, the honour and welfare of all ranks and their dependents in the Armed Forces.

9. For the reasons aforesaid, we are of the view that the action of the respondents in not granting family pension is wrong and illegal. We are of the view that applicant is entitled

for grant of Ordinary Family Pension from the next date of death of her son i.e. 12.08.2015. However, applying the principles laid down by the Hon'ble Apex Court in Union of India & Ors Vs Tarsem Singh { (2008) 8 SCC 648}, the arrears of pension will be restricted to a period of three years prior to the date of filing of O.A. which was filed on 17.11.2021.

10. In view of the above, the Original Application deserves to be allowed, hence **allowed**. Respondents are directed to grant Ordinary Family Pension to the applicant from the next date of death of her son i.e. 13.08.2015 but arrears would be restricted to three years prior to date of filing of O.A. i.e. 17.11.2021. The respondents are further directed to give effect to this order within a period of four months from the date of receipt of a certified copy of this order. In case the respondents fail to give effect to this order within the stipulated time, they will have to pay interest @ 8% on the amount accrued from date of order till the date of actual payment.

11. No order as to costs.

(Vice Admiral Abhay Raghunath Karve) (Justice Umesh Chandra Srivastava)

Member (A)

Member (J)

Dated: 01 June, 2022

Ukt/-