

**Court No. 1**  
**RESERVED**

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

**Original Application No. 285 of 2013**

Tuesday, this the 2<sup>nd</sup> day of March, 2021

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

Smt. Sunita Devi  
Wife of Atal Lal Yadav  
Mother of No. 15421596Y Sepoy Ambulance Assistant  
Tarun Kumar Yadav  
R/o Ganga Khera, Post Office – Manak Nagar,  
Alambagh, Lucknow (UP)

**.... Applicant**

Ld. Counsel for the Applicant: **Shri V.P. Pandey**, Advocate

Versus

1. Union of India, through its Secretary, Ministry of Defence, New Delhi.
2. The Chief of Army Staff, Army HQ, New Delhi.
3. Officer In-charge, Army Medical Corps Records, Lucknow.
4. Commanding Officer, 60 Para Field Hospital, Agra.
5. PCDA (P) Allahabad.
6. Smt. Babita Yadav, W/o Late Sep Tarun Kumar Yadav,  
D/o Pratap Singh Yadav,  
R/o Babu Khera Yadav PO Kalli Paschim, Distt Lucknow

**... Respondents**

Ld. Counsel for the Respondents : **Dr. Shailendra Sharma Atal**  
Central Govt Counsel and  
**Shri R.Chandra**, Advocate  
for Respondent No. 6

**ORDER**

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

- “(i) To direct the respondents to grant physical casualty award benefits, pensionary benefits and other benefits as entitled to the applicant and her husband being the dependents of deceased, No. 15421596Y Sepoy Ambulance Assistant Tarun Kumar Yadav.
- (ii) Any other relief as considered proper by this Hon’ble Tribunal be awarded in favour of the applicant.
- (iii) Cost of the application be awarded to the applicant.”

2. Brief facts of the case giving rise to this application are that Sepoy Tarun Kumar Yadav (deceased soldier) was enrolled in the Indian Army on 14.12.2004. On 27.01.2013 when the deceased soldier was on temporary duty cum leave, he died in a car accident at Purabganj near Gauriganj, Lucknow. Thereupon, a Court of Inquiry was conducted and the death of deceased soldier was declared as a physical casualty. Deceased soldier had married Miss Babita Yadav on 11.03.2012, and being nominee, she was paid all pensionary benefits after the death of soldier. Thereafter, applicant being mother of the deceased soldier made several correspondence with the respondents for grant of at least half of the awards entitled to her son after his death but to no avail. Being aggrieved, the applicant has filed the present original application for the grant of half of family pension.

3. Learned counsel for the applicant submitted that after few months of the death of applicant’s son, Smt. Babita Yadav (Daughter-in-law) left her matrimonial house and is living with her parents in her parental house. She was repeatedly requested and persuaded to remain with the family as the applicant was completely shattered by the sudden death of her son and the separation of Smt. Babita Yadav

was another blow to the applicant. In spite of best efforts, Smt. Babita Yadav refused to stay with the applicant. It is also stated by the applicant that Smt. Babita Yadav got remarried after few months of applicant's son death. On the representation of applicant dated 20.03.2013 for grant of assistance, HQ Madhya UP Sub Area, Lucknow vide its letter dated 26.03.2013 and District Soldier Board, Lucknow vide its letter dated 22.03.2013 requested Record Officer, AMC Records, Lucknow to solve the matter of the applicant. Then AMC Records vide its letter dated 20.05.2013 addressed to the applicant with a copy to Smt. Babita Yadav advised Smt. Babita Yadav to look after parents of her late husband properly and solve the disputes amicably with the help of Zila Sainik Welfare Office and relatives but nothing materialised and still Smt. Babita Yadav is receiving all pensionary benefits, leaving the applicant in poverty.

4. Learned counsel for the applicant further submitted that after the death of applicant's son, she has no source of income of her own. Applicant was solely dependent on the earning of her son during her life time and after the death of her son, Smt Babita Yadav, widow had been paid all benefits and presently she is being paid family pension. No payment of physical casualty award benefits, pensionary benefits and other entitled benefits have been given to the parents (applicant). Therefore, as per the Hindu Succession Act, 1956 and Govt. of India, Ministry of Defence letter dated 31.01.2001, applicant is entitled for the pensionary and other benefits as applicable to the parents of the deceased soldier and accordingly, applicant should be given 50%

share of family pension which is being paid only to wife of deceased soldier.

5. On the other hand, learned counsel for the respondents submitted that Smt. Babita Yadav was married to the soldier and as per marriage declaration certificate, she is receiving pensionary benefits being nominee (wife). As far as re-marriage of Smt. Babita Yadav is concerned, as alleged by the applicant, she has not remarried and this has also not been proved by the applicant. The applicant's younger son is working in a private company so she is now dependent on him. Hence, Original Application deserves to be dismissed.

6. We have heard learned counsel for the parties and perused the material placed on record.

7. Having heard the submissions of learned counsel of both sides we find that it was the moral and even legal duty of widowed daughter-in-law to look after properly to the parents of deceased soldier who were wholly dependent on their son during his service and after death on his pensionary benefits, but to leave them in a destitute condition and herself living quite comfortably on the pensionary benefits of deceased soldier is quite unjust and unlawful on the part of her.

8. According to Section 8 of Hindu Succession Act, 1956, Class I heirs are entitled to get share in assets left by a deceased soldier in equal proportion :-

*“8. The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :-*

*(a) firstly, upon the heirs, being the relatives specified in class I of the Schedule;*

*(b) secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in class II of the Schedule;*

*(c) thirdly, if there is no heir of any of the two classes, then upon the agnates of the deceased; and*

*(d) lastly, if there is no agnate, then upon the cognates of the deceased.”*

9. Heirs in Class I of Schedule are as below :-

Son; daughter, widow; mother; son of a predeceased son; daughter of a predeceased son; son of a predeceased daughter; daughter of a predeceased daughter; widow of a predeceased son; son of a predeceased son of a predeceased son; daughter of a predeceased son of a predeceased son; widow of a predeceased son of a predeceased son.

10. In view of aforesaid Schedule of heirs in class I, since the widow of deceased soldier has no child then widow and mother are entitled to get share of family pension, being inherited property of the deceased soldier. Hence, Smt. Sunita Devi (Mother) and Smt. Babita Yadav (Wife) are equally entitled for share of family pension being inherited property of the deceased soldier. Therefore, Mother is held entitled to receive half of the pensionary benefits being inherited property of the deceased soldier. The division of family pension in equal proportion between the applicant and her widowed daughter-in-law should be allowed with stipulation that in the event of death of either, the survivor would draw full family pension thereafter.

11. In view of aforesaid, Original Application is disposed of with the direction to the respondents to consider the claim of the applicant for division of family pension in equal share (i.e. 50% each) between the wife and mother of deceased soldier. The respondents are further directed to take appropriate decision expeditiously, preferably within four months from the date of receipt of certified copy of this order.

12. No order as to costs.

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

Member (A)

Member (J)

Dated: March, 2021

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